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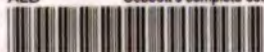
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OF  
State Trials  
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PROCEEDINGS FOR HIGH TREASON AND OTHER  
CRIMES AND MISDEMEANORS  
FROM THE  
EARLIEST PERIOD TO THE YEAR 1783,  
*WITH NOTES AND OTHER ILLUSTRATIONS:*  
COMPILED BY  
T. B. HOWELL, Esq. F.R.S. F.S.A.  
AND  
CONTINUED  
FROM THE YEAR 1783 TO THE PRESENT TIME:  
BY  
THOMAS JONES HOWELL, Esq.

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VOL. XXXI.  
[BEING VOL. X. OF THE CONTINUATION]  
49—53 GEORGE III.....A. D. 1809—1813.

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L O N D O N :

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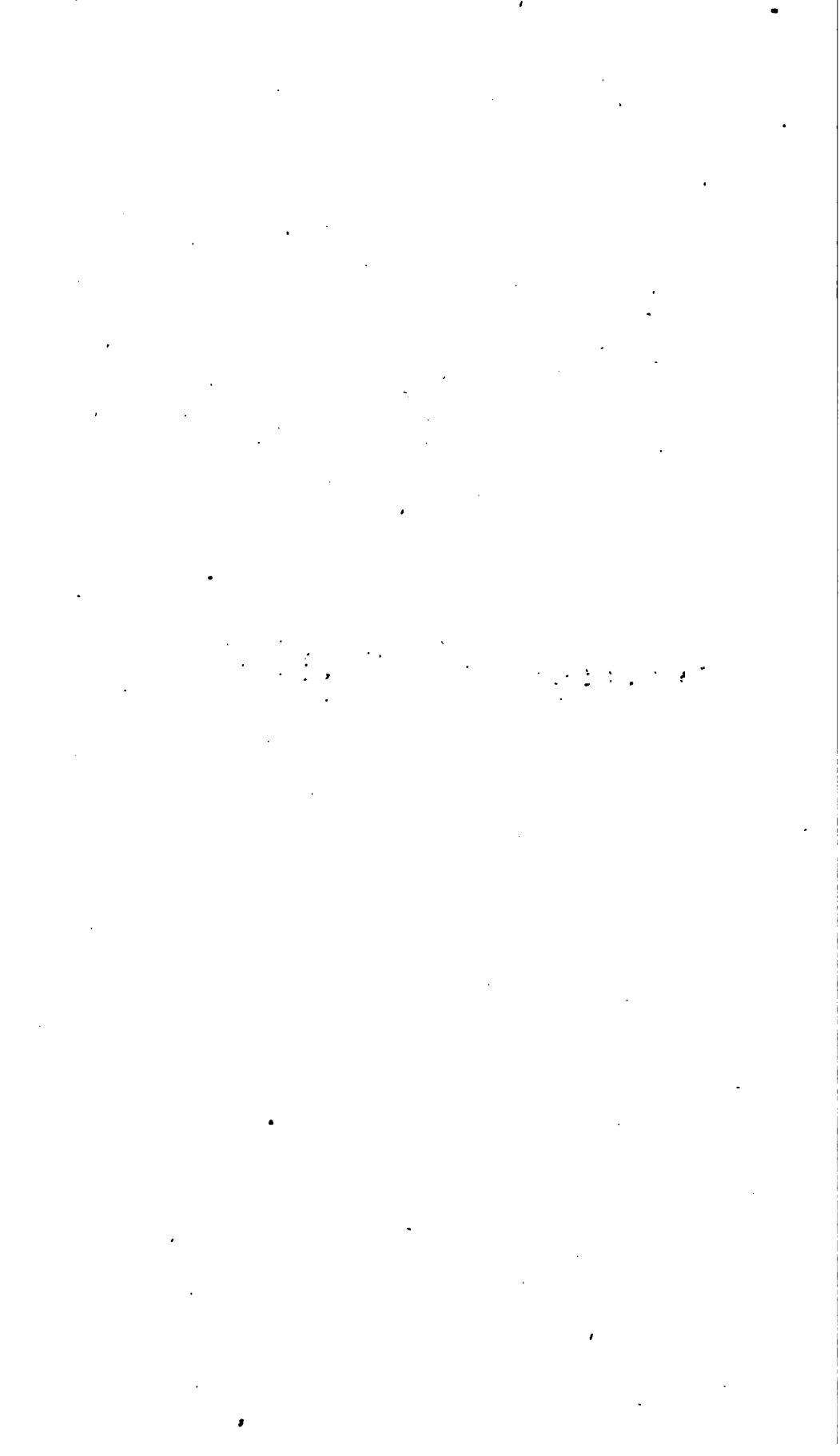
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# STATE TRIALS,

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681. The whole Proceedings in the Case of JOSEPH HANSON, Esq. on an Indictment for a Misdemeanor, in aiding and abetting the Weavers of Manchester in a Conspiracy to raise their Wages ; tried before the Hon. Sir Simon Le Blanc, Knight, one of the Judges of his Majesty's Court of King's Bench, and a Special Jury, at Lancaster Spring Assizes : 49 GEORGE III. A. D. 1809.

LANCASTER Spring Assizes, 1809.

REX v. HANSON, Esq.

*Counsel for the Crown.*

Mr. Serjeant Cockell, Attorney-general for the Duchy of Lancaster ;

Mr. Park [afterwards a judge of the Common Pleas] ;

Mr. Topping ;

Mr. Holroyd [afterwards a judge of the King's bench] ;

Mr. Scarlett,

Mr. Cross,

Mr. Yates,

Mr. Richardson.

*Attornies.*

Mr. Litchfield, Solicitor to the Treasury ; and Messrs. Milne, Sergeant and Milne.

*Counsel for the Defendant.*

Mr. Raine,

Mr. Williams,

Mr. Littledale,

Mr. Courtney.

*Attornies.*

Messrs. Duckworth, Chippendall, and Denison.

SPECIAL JURYMEN.

William Fitzherbert Brockholes, of Claughton, Esq.

Edmund Leigh, of Chorley, Esq.

James Orrell, of Parr Stocks, Esq., and

John Hadson, of Smithy Brook, Esq.

TALESMEN.

John Jackson, of Middleton.

John Adams, of Kirkdale.

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George Grundy, of the same place.

John Whittle, of the same place.

William Turbuck, of Sutton.

Joseph Armstrong, of Manchester.

John Harrison, of Chorley, and

Robert Lightollers, of the same place,—Gentlemen.

The INDICTMENT was opened by Mr. Richardson : it was as follows :

*Lancashire* } THE jurors for our lord the  
(SS.) } king upon their oath, present,  
That before and at the time of committing the offences hereinafter-mentioned, to wit, on the twenty-fifth day of May, in the forty-eighth year of the reign of our sovereign lord George the third, by the grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, at Manchester, in the County Palatine of Lancaster, divers evil-disposed persons, to the number of one thousand and more, whose names to the jurors aforesaid are yet unknown, being workmen and journeymen in the art, mystery, and manual occupation of weavers ; and not being content to labour in that art, mystery, and manual occupation at the several rates and prices at which they and other such workmen and journeymen had been wont and accustomed to work, but unlawfully devising and intending unjustly and oppressively to augment and increase the wages of themselves and other workmen and journeymen in the said art, mystery, and manual occupation ; and unlawfully and unjustly to exact and ex-

tort great sums of money for their labour and hire in the said art, mystery, and manual occupation from the masters who employed them therein, had unlawfully, unjustly, and corruptly combined, conspired, consented, and agreed, and did unlawfully, unjustly, and corruptly combine, conspire, consent, and agree among themselves to demand, exact, and obtain for themselves and other workmen and journeymen in the said art, mystery, and manual occupation, from the masters who employed them therein, greater wages, hire, and reward for their labour and work, as such workmen and journeymen, than the usual and customary wages, hire, and reward, then usually paid for their labour and work, as such workmen and journeymen, by their masters who employed them as such workmen and journeymen, in the said art, mystery, and manual occupation. And that, in pursuance of the said conspiracy, combination and agreement, and in order to carry their said unlawful intentions into effect, divers and very many of the said evil-disposed workmen and journeymen, whose names are to the jurors aforesaid as yet unknown, had, then and there, for a long space of time before, desisted, and did then and there desist from, and totally leave and refuse to continue their labour and work, as such workmen and journeymen. And that, in pursuance of the said conspiracy, combination, consent, and agreement, and in order to accomplish and bring the same to effect, divers of the said evil-disposed persons, being such workmen and journeymen, whose names to the jurors aforesaid are as yet unknown, to the number of five hundred and more, then and there, to wit, on the 25th day of May, in the 48th year of the reign aforesaid, at Manchester, in the county palatine of Lancaster, unlawfully, riotously, routously, and tumultuously assembled and gathered themselves together, to the great breach and disturbance of the peace of our said lord the king. Nevertheless, defendant, well knowing all and singular the premises and unlawful proceedings aforesaid, but being an evil-disposed person and disturber of the peace of our said lord the king, and unlawfully and maliciously devising and intending to promote and encourage the said unlawful intentions, and to abet, and promote the said conspiracy and combination, and to aid, abet, and encourage the said conspirators in their said conspiracy and combination, heretofore, and whilst the said unlawful combination and conspiracy existed, and was prosecuted and carried on, to wit, on the 25th day of May, in the 48th year of the reign aforesaid, with force and arms, at Manchester, in the county palatine of Lancaster, did go to and amongst the said evil-disposed persons so assembled and gathered together, as aforesaid, and by speeches addressed to the same persons, incite, encourage, and as far as in him the said Joseph Hanson lay, endeavour to move and persuade the said evil-disposed persons so assembled

and gathered together, to persevere and persist in refusing to work in the said art, mystery, and manual occupation, as such workmen and journeymen, at or for the usual and customary wages, hire, and reward then usually paid for their labour and work as such workmen and journeymen by the masters, who employed them as such workmen and journeymen, and to persevere and persist in endeavouring to accomplish and bring to effect the said unlawful conspiracy and combination, and the unlawful designs and intentions aforesaid, and did then and there also unlawfully and maliciously for the unlawful purpose aforesaid, speak, utter, and publish, to and in the hearing of divers of the said evil-disposed persons, so assembled and gathered as aforesaid, the malicious and inflammatory words following, to wit: "Your cause (meaning the said unlawful intentions of the said evil-disposed persons) is good, and I (meaning himself the said defendant) will support you as far as three thousand pounds will go, stick to your cause (meaning the prosecution of the said unlawful intentions of the said evil-disposed persons), I will support you (meaning the said evil-disposed persons) as far as three thousand pounds will go, and if that will not do, I will go further; stick to your cause, (meaning the prosecution of the said unlawful intentions, of the said evil-disposed persons) and you will certainly succeed. Neither Nadin nor any of his faction shall put you off the field to-day; gentlemen (meaning the said evil-disposed persons so assembled and gathered together) stick together, and you shall gain your end. Gentlemen, (meaning the said evil-disposed persons so assembled and gathered together), you cannot live by your labour, there is room for six shillings in the cut; if you cannot obtain that, I will advance six shillings in the pound. My father was a weaver, I myself was taught the weaving trade, I am a weaver's real friend, I would advise you to be steady and stick to your purpose (meaning the prosecution of the said unlawful intentions); and, no doubt, you will gain your ends; but I advise you not to disturb the tranquillity of the country; although you have never seen my face before, you have my hearty good wishes, and I shall always be ready to assist you to the utmost of my power." To the great encouragement of the said evil-disposed persons, to the great injury and oppression of the masters employing workmen and journeymen in the said art, mystery, and manual occupation. To the great danger of the breach and disturbance of the peace of the said lord the king. In contempt of our said lord the king and his laws. To the evil example of all others, and against the peace of our lord the king, his crown and dignity.

*2nd. Count*—That the defendant so being such person as aforesaid, and well knowing all and singular the premises and unlawful proceedings aforesaid, but further unlawfully and maliciously devising and intending as afore-

said heretofore, and whilst the said unlawful combination and conspiracy existed, and was prosecuted and carried on, to wit, on the 25th day of May, in the forty-eighth year of the reign aforesaid, with force and arms, at Manchester, in the county palatine of Lancaster, did go to and amongst the said evil-disposed persons so assembled and gathered together as aforesaid, and did then and there unlawfully and maliciously say, speak, utter, and publish, to and in the hearing of divers of the said evil-disposed persons so assembled and gathered together as aforesaid, the malicious and inflammatory words following, that is to say, your cause (meaning the said unlawful intentions of the said evil-disposed persons) is good, and I (meaning himself, the said Joseph Hanson) will support you, as far as three thousand pounds; stick to your cause (meaning to the prosecution of the said unlawful intentions of the said evil-disposed persons) I will support you (meaning the said evil-disposed persons) as far as three thousand pounds will go, and, if that will not do, I (meaning himself, the said Joseph Hanson) will go further. Stick to your cause (meaning the said unlawful intentions of the said evil-disposed persons) and you will certainly succeed. Gentlemen (meaning the said evil-disposed persons so assembled and gathered together) stick together, and you shall gain your ends. Gentlemen (meaning the said evil-disposed persons so assembled and gathered together) you cannot live by your labour; I would advise you to be steady, and stick to your purpose (meaning the prosecution of the said unlawful intentions) and, no doubt, you will gain your ends." To the great encouragement of the said evil-disposed persons; to the great injury and oppression of the masters employing workmen and journeymen in the said art, mystery and manual occupation; to the great danger of the breach and disturbance of the peace of our said lord the king, in contempt of our said lord the king and his laws; to the evil example of all others, and against the peace of our said lord the king, his crown and dignity.

Mr. Serjeant Cockell.—May it please your Lordship, Gentlemen of the Jury; I am also of counsel against the defendant in this prosecution, which is certainly of a very grave and serious nature. I shall rejoice if the defendant can deliver himself from this heavy charge by proving his innocence before you this day; but if the evidence which I am about to adduce shall be as forcible as I conceive it will be, I do not know how you can discharge your duty but by convicting him; and if this should be the case, Mr. Hanson has only himself to thank for his misfortune.

Gentlemen, in prosecuting this cause, I shall not endeavour to inflame your passions, or to excite your indignation against the defendant. All expressions of this sort shall be avoided; and if you have out of Court heard any thing of the transaction, which is the subject

of the present indictment, I beseech you to dismiss from your minds every impression which such a circumstance may have occasioned, for every British subject is supposed to be innocent until his guilt is established by evidence.

In conducting this prosecution, I shall endeavour to do my duty to the public, and at the same time to behave with the utmost moderation towards the defendant. I have no malice to gratify, nor do I entertain any personal enmity against Mr. Hanson; and I do not wish for his conviction unless the charge shall be satisfactorily proved to your own minds. Do you, on the other hand, your duty, whatsoever consequences may ensue.

I will proceed to state what was the conduct of the defendant on the 25th of May last. Mr. Hanson, I understand, is a man of fortune. I believe he has been in trade, but he certainly was not in trade or business at the time this offence is alleged to have been committed. I believe he possesses an ample fortune by inheritance. I mention this only for the purpose of stating that Mr. Hanson having himself been, or his father having been in trade, he must know what consequences would ensue from inflaming a discontented body of men, who, though they had always received from their employers a just recompence for their labour, were striving by force to augment their wages.

On the 24th of May, the weavers of Manchester, and its neighbourhood, had certainly considerable difficulties to struggle with. The depression of trade bore hard upon them, and upon all; and every one must have been subjected to a certain portion of the common pressure of the times. I believe these weavers were much to be pitied. Their distresses were very great; the high price of provisions might make it difficult for them to procure a livelihood; but, the greater their grievances were in reality, the less ought Mr. Hanson to have concerned himself with these misguided people, especially at a time when they were assembled to the number of thousands, and meditating most destructive measures unless their wishes were complied with.

On the 24th of May, a very large body of weavers assembled in St. George's Fields, I think at eleven in the morning. They were very resolute. They said they had assembled there for the purpose of raising their wages, and were determined that their employers should comply with their demands—and they would not leave that spot until their demands were satisfied. Gentlemen, some of the police (who are very diligent and the public are deeply indebted to those who took upon them to act in the magistracy, and other departments of justice on this occasion) having received intelligence of this meeting, arrived. The boroughreeve came upon the spot, and, like a very honest and conscientious man, he told them that if they had grievances, they ought to be redressed; "but," added he,

"this is not the way in which you ought to act. You will bring upon yourselves and families great calamities; you are an unlawful mob, you are come here to disturb the peace and alarm the neighbourhood, and I beg you will disperse." No—they would not disperse—they would not return—they thought they had better remain there and be shot, than go home and see their families in want.

The boroughreeve finding his arguments vain, went to the magistrates and told them the situation in which they were. The military were at last called in, in order that the mob might be dispersed. The magistrates then said, they would do what they could for them—they would undertake to advocate their cause as far as it was proper to do so. With these assurances they dispersed, I think about four in the afternoon; and it was hoped tranquillity would have been restored. Not so: on the morrow, about the same hour, a terrible number—to what amount you will hear from the witnesses—many thousands of the weavers assembled; and many of you know what the town of Manchester is composed of, what a number of persons of other descriptions there are to mingle with those who meet for these purposes. The town was alarmed. Mr. Nadin, the deputy-constable of Manchester, went round—told them the consequences of their conduct—was laughed at, and treated with contempt. The boroughreeve appeared—argued with them—did every thing he could—exhorted them to return quietly home. He was told—"this is not language to hold out to us to-day. Did you not say yesterday our grievances should be redressed?"—and they showed a very strong disposition to become more riotous. He was then told that they had appointed delegates; "which delegates," said they, "are now at the magistrates'. Go you to them, see what can be done, and we will stop here." Accordingly the boroughreeve went to the magistrates, and reported what he had heard from the mob; their representations proved fruitless, and I think the note I am going to read to you did great honour to the head and heart of Mr. Farrington, a very active magistrate in the town of Manchester. He wrote this answer:—

"It is the opinion of the magistrates that, under the existing circumstances, they cannot treat with men deputed from a large body of men assembled in a tumultuous and unlawful manner. If they disperse, and go peaceably and quietly home, they will take their situation into consideration, and they are ready to attend to any representation which may be made in a proper and peaceable manner." There is no man living who on such an emergency could possibly have acted with more dignity as a magistrate. This paper was then put into the hands of the boroughreeve; he handed it over to the delegates, and it was read to the people. Instead, gentlemen, of showing any disposition to act under the advice of these magistrates, they, having said they

would not be satisfied with it, became more tumultuous. There was no time then to deliberate. The military were sent for. Mr. Nadin and several officers had been there during the whole time of this assembly, but they could do nothing. And now I call your attention to the conduct of this defendant, than which I cannot, if I prove the case, imagine any thing more wicked.

About half-past three, or thereabout, Mr. Hanson came upon the ground. Mr. Hanson had at this time neither a civil nor a military uniform. He was not a magistrate or a peace-officer, nor had he the command of a military company, therefore he had no business there, unless to suppress a riot—to endeavour to assist the peace-officers in sending these unhappy men to their homes. If he had come with this purpose, it would have been well; and here I must make this observation, that soon after he came on the ground he boasted of his influence over the mob—that it was in his power to make them disperse and go quietly home. If he had that power, why did he not use it? If he was a good subject of the country, why did he not go to the magistracy—why not join the police, and by the power he had over these people, occasion them to disperse? See what he did! He came to the ground on horseback, in order that he might have the command and a view of the people. Thus mounted, he rode up to an officer, lieutenant Trafford, who had been detached to see what was going forward, and if possible to disperse the multitude; well, he comes up to that officer—and that I may not do Mr. Hanson injustice or misrepresent what passed between him and lieutenant Trafford, I will read what is given to me as his testimony—lieutenant Trafford of the 4th dragon guards, saith that, "as part of his regiment was proceeding to St. George's Fields, he was detached in order to undertake the command of the same, and to ascertain the condition of the rioters." No gentleman could have acted with more prudence than did lieutenant Trafford on this occasion, and I think that when I have read the whole of his account of this transaction, you will say the same. He says, "that on coming on the ground, he had not been above a few minutes before Mr. Hanson came up to him, and asked him if he would allow him to address the populace, and he added, he had much influence over them, and that whatever he desired them to do, it would be done immediately. When I then found he was the commander of this vast meeting—that he was the very principle on which it acted, I told him I could not allow him to address the people, and he then most insidiously answered, he hoped they would go quietly home."

Gentlemen, this adds to his guilt. Mr. Trafford replied, he could not allow him to harangue the people, that it would exasperate them the more. Mr. Hanson begged that he would not use any harsh means towards them; he said he should not hurt them.—If Mr.

Hanson had so great an influence over these people, why did he not go to the magistrates, and if he had any wish that they should go home, surely he should have taken this occasion to have assisted them in dispersing these unfortunate men.—Mr. Hanson then went a short distance from him, and addressed the populace, pulling off his hat to them, huzzaing and bowing. Men who had come to that place so riotous—so inflamed—so determined—Mr. Hanson addresses in the way I have described to you. The people then cheered him, and he shouted again in loud huzzas. Mr. Trafford on seeing this (he could only hear Mr. Hanson speak, for he was at too great a distance to hear his expressions) rode up to Mr. Hanson and said, “he would be particularly obliged to him,” observe gentlemen, “*would be particularly obliged to him* to go off the ground, for the people pressed so much upon the military, that it was impossible to maintain order, and it was his presence that induced the people to be so tumultuous.”

Good God! gentlemen, what would an honourable man and good subject have done? He would have said “I will leave the ground this moment rather than stay here inflaming an angry mob.” Mr. Hanson asked lieutenant Trafford if he ordered him off the ground? Why gentlemen, he had not; he said, “he would be obliged to him to go off.” But Mr. Hanson says, “do you order me off the ground? If so he would go off.” He replied, he could not order him off, but that no gentleman well-disposed would appear in that manner at the head of the people. Mr. Trafford, finding he would not go, very properly sent for a constable. On this Mr. Hanson went to another part of the ground, bowing and pulling off his hat, haranguing the people, and from the exertion he made, Mr. Trafford had no doubt he was using very violent language. What passed he could not tell, but he could collect what effect it had upon the people: they huzzaed, and became a very tumultuous assembly indeed. He then went on, and got to a small elevation, and there harangued the mob for a considerable time, six or seven minutes will amount to that in such an assembly. Now mark what he then did—he saw the officer and the magistrates arrive, and then he slunk away. He did not disappear till he found the magistrates approaching, and probably thought that he should be the first victim of their power. If he had been a good subject he would have said, “I will join the magistrates—I will endeavour as far as I can to assist in dispersing the people.” No, gentlemen, Mr. Hanson knew if mischief did ensue, it would be well for him to be out of the way.

Gentlemen, I will now state to you what he said in different parts of the field. On one occasion he had inflamed the mob to such a degree that his horse reared up, and he tumbled backwards. However, having been so thrown, he mounted again, and with a persevering

malignity began again to excite the people. I will read to you what he said to different parts of the mob. “Your cause is good, and I will support you as far as three thousand pounds; stick to your cause.” That cause was, to stand out and not work till their demands were complied with by their employers. “I will support you,” again he says, “as far as three thousand pounds will go, and if that will not do I will go farther; stick to your cause, and you will certainly succeed; neither Nadin nor any of his faction shall put you off the field to day.”—Why, gentlemen, what are the principles of Mr. Hanson? Are they the principles of an honest man, or those of a disaffected and disloyal subject? He tells these men not that Mr. Nadin is an officer of justice, that the magistrates are the preservers of good order—no, instead of treating the names of these gentlemen with respect, he impudently, dishonestly, and disloyally, designates them as a faction.

I cannot, after this, say that Mr. Hanson is either a loyal subject or a good man; and in this I do no injustice to Mr. Hanson. He says, “stick together, and you shall gain your ends.” Now this is the most abominable part of the whole. “Gentlemen, you cannot live by your labour; there is room for six shillings in the cut, and if you cannot obtain that, I will advance six shillings in the pound.” Good God! how profligate is this! He tells them you ought to have so much, and if you cannot obtain it, I will advance you so much. He adds, “my father was a weaver. I myself was brought up to that trade. I am their real friend. I would advise you to be steady and stick to your purpose, and you will gain your ends; but do not disturb the tranquillity of the country.”

This again aggravates his guilt, because he was endeavouring to do all the mischief he could. It proceeds from an artful and wicked disposition to desire them not to disturb the tranquillity of the country, when he has but just told them not to regard Nadin or his faction, for that they should not put them off the field that day. This, gentlemen, I say was a shallow artifice, proceeding from a wicked mind but a very active one; qualifications which would go but a little way in checking the effects which his words were calculated to produce.

He then says, “though you never saw my face before, you have my heart and good wishes; I will assist you to the utmost of my power; your cause is good, and I will support you as far as three thousand pounds. Stick, stick to your cause; if that will not do, I will go farther. Stick to your cause, gentlemen, stick together, and you will gain your ends.” Mark what follows, and this was his parting speech. “Gentlemen, you cannot live by your labour; I would advise you to be steady, and stick to your cause, and you will certainly gain your ends.” Gentlemen, if I prove all this, to comment upon it would be to insult your under-



standings; there is not a man living who hearing it proved, will not consider Mr. Hanson as guilty of the charge.

I am sorry to tell you that the exertions of the magistrates and the kindness shown by them to the populace availed nothing; all arguments urged by them proved fruitless. The mob was not dispersed till a melancholy catastrophe closed the scene. Inflamed, no doubt by this violent conduct of Mr. Hanson (for nothing of the sort had been done till he appeared on the spot), a man threw a brick bat at one of the soldiers; the soldier fired, he was shot, and afterwards died! What Mr. Hanson's feelings may be I will not say, but I would not have his feelings for all his wealth.

When I hear Mr. Hanson's defence, if his cause be well defended, I shall reply. If it be not, in the discharge of my duty, I certainly shall take an opportunity of making my observations upon it. To convict men in humble situations will effect but little good; but when I have brought before you a man of wealth, of great property, and you find him one who would carry every thing to the last extremity; if such a man is consigned to punishment by the justice of his country, such an example will be of real use; it will do more good than the conviction of ten thousand poor, and when you see him coming into such an assembly with the view of exciting riot and mischief, you see the guilty character, who ought, if the charge is brought home to him, to be consigned to legal punishment, and (what will necessarily attend him) absolute infamy.

*William Starkie sworn.—Examined by Mr. Park.*

I believe you were the boroughreeve of Manchester, in the last year?—I was.

Do you recollect any thing particular happening on Tuesday, the 24th of May?—Yes, I do.

What was the circumstance that attracted your attention on that day?—I was informed of several assemblies on that day.

In consequence of such information, did you proceed to St. George's-fields?—I did.

Did you find any number of persons assembled there, as you had been informed there would be?—I did.

Mr. Justice *Le Blanc*.—How near Manchester do you suppose St. George's-fields to be?—It is in Manchester.

Whereabouts in Manchester?—It is in Newton's-lane.

Mr. *Parks*.—Did you find any persons assembled there, and what number? I do not ask you to a hundred?—Five or six hundred persons assembled; it was in St. George's-lane, adjoining to St. George's-fields, before a public-house.

Were they so assembled in a quiet and peaceable, or in a riotous manner?—They were peaceable at the time we got there.

How long did you stay there at that time;

when you first went?—About an hour and a half.

Did you learn from the people assembled there, what was their object in being so assembled?—They said they were waiting for a report from their delegates, who were then sitting in the house.

Did they state upon what subject this report was to be made?—I heard some of them say, it was in consequence of their bill being thrown out of parliament.

What more did you hear?—I heard them say nothing more.

During the hour and a half you were there, was there any other disposition manifested than what you have described?—No.

What time of the day was it when you first went there?—About eleven o'clock I think.

Did you hear any of the gentlemen who were with you desire to see those delegates?—Colonel Silvester desired to speak with them.

Did you hear any person say any thing to the mob at that time?—He addressed the mob.

What did he say?—He told them to go quietly home, and the consequences of remaining where they then were.

Did they obey him?—They did not.

Was it at that time and before you quitted the place that the Riot Act was read?—It was.

By whom?—Colonel Silvester.

Was it during your stay with them at that time that information was brought of others coming down?—It was.

Did any others, I do not mean two or three, but any number to a considerable amount come down?—Not to any great degree.

Did the reading of the Riot Act, in your judgment, from your observation at the time, produce any effect?—It did not.

In consequence of information so received about others coming down, was there any message sent for the military?—I was requested by colonel Silvester to send for the military.

Were you on the field yourself when they came?—I was.

What time did they come?—It might be one o'clock.

I will go on to the Wednesday; they were on the Tuesday dispersed?—Yes, about four o'clock, and all was quiet.

Now, on the following day, Wednesday the 25th of May, did you go again to St. George's-fields?—I did.

At what o'clock?—About twelve.

Did you then go to St. George's-fields yourself, or to the lanes?—St. George's-fields.

Were there any number of persons then assembled?—There was a very considerable number.

What is your estimate of the numbers?—Speaking moderately, I think from three to four thousand.

In consequence of your observation of the

numbers, did you give any information to the magistrates?—It was in consequence of the request of the magistrates that I went to the ground.

Did you ask the mob any questions?—I did.

What did you say?—I asked them the cause of their meeting there in such numbers; they told me I could not be ignorant of their situation; that their families were in the most distressed state; that they could not live by their wages; and it was time then to endeavour to get them mended.

I take it for granted then, Mr. Starkie, you knew their situation?—I did.

What did you say to them in consequence of their having told you this?—I told them, I thought that they had taken a wrong method to obtain their ends; I should recommend them to go home quietly; but if they remained where they were, I should consider them as a mob, and treat them as such.

Did you say any thing to them about the military, Mr. Starkie?—Not at that time; they were not then come up.

Did you say any thing more to them but what you have mentioned at that time?—I entreated them to disperse; they then asked me, if four of their people had not been with me that morning; and I told them they had; the purport of their waiting on me, was to require my interference with their masters.

Did those persons on the field remind you of the purport of their waiting on you?—I told them, if they would go quietly home, I would go down and meet their delegates, as I had fixed half past twelve to meet them at the New Bailey.

Did they go, sir, in consequence of your advice?—They did not.

You, I believe, did go to the magistrates?—They said, if I would allow them to remain till their delegates returned, they then would go home quietly. I said, my lads, may I depend upon you? They said, I might, and that they would not move from their places until my return.

You went immediately, I take for granted, to where you said you would be?—I did.

Do you happen to know, in point of fact, whether a message was returned by the magistrates on the subject?—It was.

We have that message in writing; have you seen that before, sir? [Pointing to a paper which was handed to the witness] Will you be so good as to look at it, and say whether it is the answer?—I make no doubt of it.

That is the paper, is it?—It is.

Mr. Justice *Le Blanc*.—Are you sure it is the same piece of paper?—I have no doubt of it, my lord; I do not know the hand-writing of the magistrates.

The paper was here read as follows "May 25, 1806, a quarter before three, P. M.—It is the opinion of the magistrates, that under the existing circumstances they cannot treat with men de-

puted from a large body of men, assembled in a tumultuous and unlawful manner. If they disperse, and go peaceably and quietly to their homes, the magistrates will take their situation into consideration, and be ready to attend to any representation which may be made in a proper and peaceable manner."

Before that answer was given, Mr. Starkie, did you see any of the persons who were called delegates, with the magistrates?—I did, three of them.

And was what they had to say heard by the magistrates, before that opinion was written?—It was.

After that, did you return to St. George's fields?—I did, immediately.

Did you find any difference, as to the numbers? were they less, or the same?—I thought the numbers were then greater.

Was that paper, or that opinion of the magistrates, read to those who were so assembled?—It was.

By whom?—By their own delegates; I requested (as they were pressing forward) that they would keep on their own ground, and tried to persuade the people to go towards the high road.

Did they obey you, or take a course of their own?—On the contrary, they did not for the first time; I heard murmuring run through the assembly.

Did you, yourself, say any thing to them as to any promise they had made to you?—I did: I reminded them of the promise they had made me, that they would disperse, if I would obtain an interview of their delegates with the magistrates.

Did your advice or remonstrance to them appear to produce any effects on the mob in dispersing them?—It did not.

Was there any thing said by any of them about dispersing?—I think not at that time.

At any time before the time Mr. Hanson came to the field?—The delegates had promised the magistrates to assist in dispersing them; I therefore thought it advisable to leave them a short while alone. Fielking and I left them, and rode up and down the lane for the space of twenty minutes, or more, on horseback; I then returned; on our return we were met by Bashford and Marshall, two of the delegates that had been at the Bailey, and they told us they could not be of much use to us.

In consequence of what passed between two of the delegates and you, you returned to the field?—We did.

Did you again try any arguments to induce them to go home?—I again urged them to go home, and told them the consequences of remaining there.

Having stated these terrible consequences to them, what was said or done by the mob?—They said they would not go; they might as well remain there and be killed, as go home and see their families starved.

Did all your kind remonstrances produce any effect?—None.

In consequence of that, what did you yourself do?—I then said, my lads, I can stay here no longer; I must go and inform the magistrates.

In consequence of that, I take it for granted you did so?—I did.

Did you return to the field with the magistrates?—I did.

About what o'clock did you come back?—I think it was near night.

What distance is this field from where the magistrates sat at the New Bailey?—About a mile.

How many magistrates went up with you?

—Four; Mr. Farrington, colonel Silvester, and two others.

Did they take any military with them?—They did.

Do you remember what number of soldiers?—I do not.

I fancy the cavalry were there?—Yes.

Was Mr. Trafford one at that time?—The regiment was certainly of which he was lieutenant.

When you got back to the fields, did the magistrates, and the other officers of the police, use any means to induce the mob to return home?—They did. Mr. Farrington addressed them, and told them to go home, and what would be the consequences of remaining there.

In many parts of the field?—Yes.

Did he mention any thing to them about the military?—I really cannot say.

Did you hear any directions given by the magistrates to the military at that time?—I did not.

I believe, Sir, they were dispersed finally by the military?—Yes, Sir.

Did you remain on the field till they were dispersed?—I did.

What time in the evening was it?—I did not come off the field till ten at night; the principal part was off before seven.

I believe, that you yourself did not see Mr. Hanson on the field at all?—I did not.

Was any mischief actually done by the mob?—One poor fellow lost his life; but it was not in the field, it was in the lane adjoining.

*William Starkie* cross-examined by *Mr. Raine*.

Mr. Starkie, I shall trouble you with very few questions; you appear to be very correct in your evidence. You stated, if I understood you right, that these people complained of their bill having been lost?—They did.

If you remember right, Mr. Starkie, the intelligence first reached Manchester on Sunday?—It did.

That was the twenty-second?—It was.

Was it thrown out of the House of Commons on Thursday the 19th? however intelligence of its having been thrown out arrived on the twenty-second?—It did.

You have already told us, that this produced a very sensible impression upon the weavers?—I did.

As yet, Mr. Starkie, we have heard nothing of what passed on Monday, the day after the intelligence arrived. Was there not a number of persons assembled the day after?—Not in Manchester; in Stockport.

But I mean Manchester?—I did not hear of it.

I do not ask you now, what you understand, but have you any reason to suppose that on Monday any number of weavers assembled in Manchester?—I never heard.

Do you remember the time when their first application was made to parliament respecting the bill?—There had been an application which had not succeeded; I do not know how long before.

You were boroughreeve at this time?—I was.

In effect chief magistrate of Manchester?—No power whatever.

But I do not know whether you had not, as boroughreeve, happened to receive intelligence respecting the rejection of the bill?—I received a letter from colonel H—— and — Stanley, announcing the rejection of the bill.

The bill was an application to fix the price of the wages of the weavers, below which their wages should never sink. I do not know whether it fell within your knowledge, that Mr. Hanson had always been a strenuous advocate of the Weaver's Bill?—I understand so; I do not speak of my own knowledge.

It was a common report, was it, with you at Preston, at the time he stood candidate?—It was not.

Mr. Sergeant *Cockell*.—Preston election! what have we to do with Preston election?

*Joseph Nadin* sworn.—Examined by  
*Mr. Holroyd*.

You are the deputy constable of Manchester?—Yes, sir.

Were you present at St. George's-fields, or lane, on Tuesday the 24th of May?—Yes.

Were you present there on the Wednesday, when the journeymen weavers were assembled again?—Yes, sir.

What time of the day was it when you first went there?—I think about twelve, when I went with Mr. Starkie and Mr. Fielding.

Did you go round amongst the people there assembled, and say any thing to them?—Yes, I did.

What was the subject of your discourse to them?—To persuade them to go home peaceably.

What answer did they make to your persuasions; did they accede to them?—They said they would not go home; they said they would rather be shot in the field, than go home and see their families starved.

Did you go amongst them to different parts of the field, using the same persuasions?—

Yes; and also said they would rather die on the field, than go home and see their families starved; they could not live on the wages they had.

I believe you went about to the different weavers' shops, and found them all shut up?—I went round the town in different parts.

Did you find any of them at work?—I was not inside, but the shutters were shut, and there was not any of them at work.

Did you make any inquiry amongst them as to the cause of their being off work?—I asked them the reason why they did not go to their work; they said the others came and fetched their shuttles, and they could not work.

Was it to those so assembled you put this question?—They appeared to be weavers.

But were they among the mob?—No; they were five or six together.

Mr. Raine.—Then I object to that question; it was not in the field.

Mr. Holroyd.—Did you make a like inquiry of those who were assembled in the field, of St. George's-lane?—I did not.

You know Mr. Hanson, the defendant?—Yes, I do.

Did you see Mr. Hanson in St. George's-fields, or lane, on Wednesday, the 25th of May?—I saw him in St. George's-lane.

What time of the day was it when you first saw him there?—It was when the military came on the ground; I believe the military did not come up at the same time I did; when the first party came up.

Was he on horseback or foot?—He was on horseback.

What time of day was that?—I think about four o'clock; but I am not certain.

Did you see him come into the lane; or was he there when you saw him?—When I saw him, there was a shout, and then I saw Mr. Hanson ride on in the lane.

What did he do, or say, then?—He had his hat off then, and when he pulled his hat off, they shouted.

Did you hear him say any thing?—It was such a distance I could not tell.

Then all you can say as to him, is his bowing to them with his hat off?—That is all.

Lieutenant Trafford sworn.—Examined by Mr. Yates.

Mr. Trafford, I believe you are in the fourth dragoon guards?—I am, sir.

Do you remember receiving any orders on the 25th of May last?—The regiment received orders to turn out immediately; it was then about two o'clock, as the men were going to their dinners; they were in the barracks, ready to turn out, when we proceeded as far as Oldham-lane; forty file of men, of which I was the head, had orders to proceed. I was ordered to proceed the nearest way to St. George's-fields, where the riot was existing.

Upon your arrival at St. George's-fields,

what did you see?—A large crowd of people assembled together.

Can you form any guess at their number?—I should think there were six or seven thousand at least; they were greatly increased towards the last hour, I understood.

Did you go with your men amongst them?—I did, sir.

Had you any difficulty in going amongst them?—Great difficulty, without hurting the people.

When you had been there a short time, did you see Mr. Hanson on the ground?—After I had been there a few minutes, I did; Mr. Hanson addressed himself to me, sir.

Mr. Justice Le Blanc.—Did he come up to you, sir?—He did, my lord.

Was he on horseback?—He was, my lord.

Mr. Yates.—Was any body with him?—Not any person that I knew of at that time.

What did he say?—He looked about him at first, and then asked me not to hurt the people by any means, and he begged leave to harangue the people; he said—"Would you allow me, sir, to speak to the people, and they will go quietly home, I hope so," that was the expression, my lord, "I hope they will go quietly home." He continued saying, in the same breath—"I have much influence over them." I replied—"I certainly would not hurt the people, neither would I allow him to speak to them." That was in answer to the question he asked me.

What then passed?—He rode off a little distance to the left.

Did you see him do any thing or say any thing?—He was speaking, bowing, and huzzing to the people, at last, with his hat off; I could hear him speak, but could only collect a few words, my lord, the noise was so great.

What was the nature of the noise? Was he doing any thing else besides speaking to the mob with his hat off?—Huzzing; one time, particularly, there was a great huzza, and he went—(describing the manner with his hand.)

When you saw this going forward, what did you do?—I presently rode up to him, and begged he would not speak to the people any more.

Repeat the words you said?—I said, I will be particularly obliged to you, Mr. Hanson, not to speak to the people; it is by your presence that the people are so exasperated.

After you had desired him not to speak to the people, did you desire him not to do any thing else?—I particularly wished he would go off the ground.—I said, I shall be obliged to you to go off the ground.

What answer did Mr. Hanson make to your request?—He went a little on one side, and there, I believe, he was thrown off his horse.

When you desired Mr. Hanson to go off the ground, did he make any reply?—He said something, but I could not exactly hear what it was.

Did Mr. Hanson say any thing about or

daring?—[Mr. Raine objected to the question, and it was withdrawn.]

Was any thing further said at that time before Mr. Hanson rode off?—He particularly wished me again not to hurt the people. I said, I could not allow him to harangue the people, and I would be particularly obliged to him to go off the ground, I should only act by the direction of the magistrates.

Mr. Justice *Le Blanc*.—Do you recollect what he said to that?—I do not, my lord; I rode away again towards the men.

Mr. Yates.—Did you observe Mr. Hanson again?—I did, sir.

What was he doing when you observed him afterwards?—I think he was getting back the saddle of his horse, somebody was leading it.

What was he doing?—He was going towards the rear of the men.

What do you mean by the men?—The rear of our own men. I said again, I will be particularly obliged to you if you will immediately go off the ground, for he seemed dilatory in doing it.

You said you desired him to go immediately off; what said he to that?—He did not make me any other answer, but that he hoped the populace would be quiet.

Did you see him afterwards amongst the populace?—I saw him then proceeding in the lane by the sign of the Gaping Goose.

Did you see what he was doing there?—I saw him a little elevated, and speaking to the people, and doing as he was before; bowing to them with his hat off. Soon afterwards, I believe, the rest of the troops came.

Was he elevated from the ground?—There was a little mound; I cannot tell whether it was the lane side or the field side.

Was he on horseback or on foot then?—On horseback.

How soon after this did the remainder of the troops come up?—I suppose, from the time I first saw Mr. Hanson on the ground, it might be twenty minutes before the rest of the troops came up.

What did Mr. Hanson do after the troops came up?—Mr. Hanson, as soon as I saw them coming, I cannot say whether he saw them or not, (he was a little further off than I was myself) rode off towards the Gaping Goose; I think he rode towards the left, and I saw no more of him.

As Mr. Hanson was going off did you observe any thing particular among the populace?—Many of them followed him, but he rode rather too quick for them.

The mob followed him, in what way?—Running after him.

And doing any thing?—Shouting—and Mr. Hanson had his hat off part of the time.

Lieutenant *Trafford* cross-examined by Mr. *Littledale*.

Towards the Gaping Goose was his road to Manchester?—I did not know.

He lived at Strangeways?—I did not know at that time.

Is not the road towards the Gaping Goose, the way to Strangeways?—I believe it is.

When he was elevated in the way you described, did you see any body with him?—I was too far off to distinguish.

Were there not other gentlemen on horseback besides Mr. Hanson?—I saw more than one, but they did not speak.

*William Wrighton* sworn.—Examined by Mr. *Scarlett*.

I believe you are a corporal in the fourth dragoon guards?—Yes, sir.

Were you out in St. George's-fields, in Manchester, on the 25th of May last?—I was.

On what occasion did you go?—I was ordered out to quell a riotous mob that was said to be in St. George's-fields that day.

When you went there did you find many persons there?—Several thousands, sir.

Did you hear these persons declare what their purposes were, or say any thing?—They were saying, at the time I entered the field—

Do you know Mr. Hanson the defendant?—Yes.

Did you see him there?—When I was about four or five minutes on the field, I saw him coming in, riding on towards Ancoat's-lane, and, coming on, the rioters seemed to cheer him; he took off his hat, and began to bow, and make his obedience to them.

Before he came, what did you hear the people say?—I heard some of them say, they would rather be slain on the field, than go home and see their families starved; but they expected there was somebody coming that would do them justice.

Was that said by one or several?—By several.

How long was that before Mr. Hanson came?—It was about two minutes before I perceived him.

Had they said any thing to the military?—At that time I came on the field, they said they hoped I was not come to hurt them, but after Mr. Hanson had come, and paid his obedience to them, they said we might come and cut and be damn'd.

Did you hear any thing that Mr. Hanson said?—I did, sir; at the time they cheered him, he took off his hat and said, stick to the cause that you are now on, I will support you as far as three thousand pounds will go; I gained my fortune by weavers, and I will support them. He addressed them, "My friends, stick to the cause that you are now on, and I shall support the cause as far as three thousand pounds goes, and if that won't do, I will go further." The rioters then cheered him again.

Did he say nothing more than that?—Not at that present moment. He then cheered them again, his horse reared up, and he felt off him.

In what way did they cheer him?—They

took off their hats with loud huzzas; his servant, or some person else, took hold of his horse, and he walked across the field, discoursing with several of the rioters; there was one of them made answer to him.

Did you hear what he said?—There was one of them made answer to him, and said, that the constable was coming into the field; he made reply, that neither Nadin nor none of his faction should put them off the ground that day.

Was that whilst he was walking?—Yes.

Did you see whether he mounted his horse again?—I was convenient to him when he mounted his horse on St. George's-road. I advanced near to him as he mounted his horse.

Did you hear him say any thing when he mounted his horse again?—He addressed the mob the same as he did when he came on the field, to "stick to their cause as they were then on, and he should support them as far as his abilities would allow."

Did you observe whether any of the magistrates were coming at that time?—Shortly afterwards I observed the magistrates coming on the field.

Was that before he went or after?—As I thought, it was on his seeing the magistrates he quitted the road, he was off the field at this time, and on the road.

Now tell us in what manner the mob cheered him?—Why in this manner it was, they took off their hats, and cheered him—that he was their friend—then several of them said they had their colonel there as well as us.

You, the military?—Yes.

Did you observe any, and what difference in the behaviour of the rioters, after Mr. Hanson came, and went away?—They seemed to be inclined to quit the field before Mr. Hanson came, but afterwards they became very riotous, and said, we might come and cut away, and be damn'd.

Did you observe any difference in the behaviour of the mob, after Mr. Hanson quitted the field?—A great deal of difference; they were much rougher, and said they would not quit the field that night.

How long did the rioters remain on the field?—I think it was between four and five when they were dispersed; it was after Mr. Hanson went away, about four or five o'clock. The Riot act had been read.

How soon after he went away, was the Riot act read?—Very soon.

You told us the mob cheered him: what was Mr. Hanson doing during that time?—He took off his hat, and addressed them as well as he could, and seemingly caressed them, being the head.

Was the noise very loud when they cheered him?—It was.

*William Wrighton* cross-examined, by Mr. *Williams*.

Wrighton, you are a corporal in the dragoons?—Yes.

You were not confined to the rounds at that time?—I was ordered from it to form a circle to read the Riot act. There were six ordered for me.

How were the other military posted?—They were behind us.

Who were the six?—I cannot just tell the men's names.

You cannot recollect the six men who were detached and sent down the field?—These were two, corporal Tynam and serjeant Switzer.

Were they with you most of the time?—They were.

Then a detachment, to the amount of forty, came together, did not they?—I think they were ordered forwards.

Were you a part of the forty?—I was.

Mr. Hanson made two distinct speeches?—Yes.

Then he must have made one before he was off his horse and one after?—Yes.

Were they both the same?—Much to the same purpose; he was on foot the second time, and on horseback the third time.

How many might he make altogether?—He made many while on foot, and two on horseback.

Long speeches?—Not very long.

He told them to "stick to the cause they were then on, and he would support them as far as three thousand pounds would go?"—That was precisely what he said both times on his horse.

Did you hear him speak when he was off his horse?—I heard him speak to the men at that time, who, he said, were delegates, but whom I knew to be persons who were obliged to quit their country at the time of the rebellion.

You have a good memory?—I have, thank God.

Can you recollect all other words as well as these?—I do not know. Any words that I hear, I can recollect; but what I do not hear, I cannot recollect.

Did you hear the attorney-general, Mr. Sergeant Cockell's speech? Did you hear that gentleman who is sitting at the table, just now speak?—I heard him, I suppose.

Have you not been in court all morning?—No, not all morning.

Have you been in court since the trial began, have you been in court since that gentleman began his speech?—I do not know.

Do you mean that as an answer? do you mean to tell us that you are not quite sure whether you heard him or not?—I did not take particular notice.

I put this to you, sir, whether you will speak to the jury and say you have not been in court since Mr. Sergeant Cockell addressed them on this offence?—I have.

Are you enabled to mention any words he spoke to the jury?—I heard him speak.

How does it happen that your memory will not serve you on this occasion? repeat the words after me; “I have fought a good fight, I have told a good story, but I am somewhat afraid the jury will not believe me?”

[Here the learned judge interposed and remarked, that they should not call on a witness to invalidate his own testimony.]

Did you hear Mr. Trafford give his evidence?—I did, sir.

Now do you recollect any thing that he said?—I cannot tell you. My lord, I apply to you, I have served his majesty for twenty years.

Well now, I ask you whether you can repeat any of the words which you know lieutenant Trafford said?—I was not convenient to hear him.

Did you not hear him?—I heard him.

Then what the lieutenant said was not particular?—It was, I do remember.

Then repeat?—He said, “on the 25th of May last, he was ordered out of the barracks to St. George’s Fields in order to quell a riot there; he then said that they came as far as Oldham-street; he was ordered with the detachment of the line to go up to St. George’s Fields; that Mr. Hanson came up to him and addressed him, and told him he expected that he would not hurt the mob that day.” Do you want any more?

Mr. Sergeant Cockell.—Yes, go on.

He then said “he went away, and Mr. Hanson went to some distance from him, and addressed the people; but he did not know what he said there, and he came back to Mr. Hanson, and he told Mr. Hanson he would wish him not to stay on the ground.”

Mr. Williams.—I ask you then whether you mean to represent those as the precise words he spoke?—It is nigh to it.

I would ask you then how long Mr. Hanson had been upon the ground before you saw him?—I cannot tell. What I did not see, I cannot tell you.

Did the men that you describe as drawn up together, remain together the whole of the time?—No, they did not.

What! were they dispersed up and down as well as the six men?—Not at that time, afterwards they were, but during the time Mr. Hanson was there they were drawn up in a body, and remained on the ground; and I particularly went over to Mr. Hanson on the road close to him.

William Wrighton, re-examined by  
Mr. Sergeant Cockell.

Pray, my friend, was your attention drawn to Mr. Hanson then as much as it has been to-day?—My attention was drawn to know what he would say.

What was there remarkable in his conduct that made you attend to him?—As several of them cheered him, and said they had their co-

lonel there as well as ours, I wished to see what sort of a colonel he was; he attracted my attention towards my king and country, and myself, for I did not think that he was a good subject.

Are you sure the words you repeated to-day were uttered by Mr. Hanson?—They were on the 25th of May last.

Michael Switzer sworn.—Examined by  
Mr. Cross.

Switzer, I believe you are a serjeant of the 4th dragoon guards?—I am, Sir.

Were you with this party on St. George’s Fields on the 25th of May, along with the corporal who has just quitted the box?—I was there on that day.

Did you see Mr. Hanson come upon the field?—I saw him on the field, not coming into the field.

Did you hear any noise?—I heard the mob shout several times.

When you first saw him, was he on horseback or on foot?—He was on horseback.

Did you hear him say any thing?—I did.

What did he say?—He took off his hat, and addressed the mob, styling them his friends.

Now have the goodness to repeat as near as you can what he said, not saying “he said so,” but just as he said?—“My friends, your cause is good, stick to it, I shall support you.” I heard him say no more at that time, nor at any other.

Then that is all you heard him say during that day?—It is.

How near were you to him at that time?—I was as close as my horse would admit.

Now what became of him after you heard him make this speech which you have repeated?—His horse reared up and he fell down on his feet.

Did he remove to a distance, or what became of him?—He went away to St. George’s-road.

And did you follow him?—No.

Then had you an opportunity of hearing what he said, if he said any thing more?—No, I was not near enough to hear him.

Did you observe whether what Mr. Hanson said, had any effect upon the people, making them more quiet or otherwise?—They shouted: they took off their hats; they hummed and cheered him.

Were they more quiet and peaceable after he said this than they were before?—No, rather more unruly.

When the mob, as you say, cheered him, did he do any thing?—He bowed to them several times.

With his hat upon his head?—His hat in his hand.

Corporal Tynan sworn.—Examined by  
Mr. Richardson.

Are you a corporal in the 4th dragoon guards?—Yes.

Were you with that detachment which went

to St. George's Fields, under Lieutenant Trafford?—I remained with the heaviest part of the squadron.

Did you come on the field with his division or afterwards?—I came a very short time afterwards.

Did you come before the main body of the regiment arrived, and the magistrates?—No, sir, I came with the main body.

Did you see Mr. Hanson on the ground?—I did, sir.

Was he there when you arrived, or did he come afterwards?—He came very shortly afterwards.

He came on horseback, I believe?—He did. He rode a white gelding, a very remarkable horse.

What did the mob do when he approached?—They cheered him as he came up the road.

What did he do in return to their cheering him?—He came into the field; they cheered him, and his horse reared so as to throw him.

You did not hear him say any thing before his horse threw him?—No, but I heard some reply he made to the opponents.

What did you hear him say?—When he was speaking, he was standing on his feet; after he had risen from the ground he was on his feet; the mob did not cheer him when he spoke; they listened to him.

What did he say?—He said, "that he knew their cause was good, and to stick to it, as they would have their ends accomplished, and as far as three thousand pounds would go to support them, he would give it to them; and more, if it was necessary."

Upon his saying that, did the mob do or say any thing?—They made a great shout, but did not make any during the time he walked round the square addressing the people, till such time as he got on his horse.

Did you hear what he said?—No, I did not, as he went round, dismounted: he remounted his horse, and then he rode round, and I rode over to him.

Did you come near to him?—I came so near to him as to hear what he said; he still addressed the people, and told them they were in a starving condition; they made answer that they wanted their wages raised as far as six shillings in the pound. He told them in reply, he would do all in his power to satisfy them, if they would go home without doing any harm; he had been in St. George's-row, and the mob began to cheer him, and he took off his hat and cheered them in a gentleman-like manner, and his horse cantered off, and I could not follow him.

When you rode across the field to him, you said your horse came quite close to his horse?—Yes, not many rods off, and then he got out upon the road.

Thomas Dickenson sworn.—Examined by Mr. Park.

You are one of the constables of Manchester, I believe?—Yes.

Were you in St. George's-fields on the 25th of May last, when the weavers were assembled there?—I was.

Was a very large number assembled on that day?—There was.

What time were you there?—About two or three o'clock.

Did you as one of the constables endeavour to send the people home?—I did.

You did not succeed I believe?—No, sir.

Did you see Mr. Hanson there any time that day?—I did, sir; I saw him as I was going on the field about two or three o'clock; when first I saw him the horse was plunging with him.

Did you hear him say any thing to the people you were endeavouring to disperse?—I did, sir.

Did you see him fall from his horse?—I did.

Was it after, or before he fell, that he addressed them?—It was after.

Were you near him?—I was close to his horse's nose.

Were you on foot or horseback?—I was on foot.

Now tell exactly what you heard him say?—When first I heard him, he addressed the mob and told them his father was a weaver; he said, "Friends, my father was a weaver, I was taught the weaving trade myself, I am a weaver's friend, I desire you to be steady and stick to your purpose; and, I have no doubt, you will obtain your end, I desire you will be peaceable and not disturb the tranquillity of the country." He said something more, which I could not retain.

Upon his saying that, did the mob do any thing?—They cheered him twice, and cried, "Hanson for ever."

While he was speaking, had he his hat off?—He had his hat in his hand while he was speaking, they cheered him, he turned his head to different sides.

After this that you have told us of the mob crying out, "Hanson for ever," did you hear him say any thing more to them?—I did, but I cannot charge my memory with it; I made a memorandum of it.

Was it made at that time?—I made it at that time.

Then you have a right to refresh your memory with it. How soon after you had left the magistrates were you ordered to make the notes?—Two minutes after I left Mr. Hanson.

Was it at the same time that they huzzaed, and cried "Hanson for ever"?—It was; he said, "although I have never appeared before you till this time, I shall be ready to aid and assist you all in my power."

After he said this, did the mob do or say any thing?—They cheered him again, and he had his hat off, he bowed to them on different roads.

Now were you on the ground before Mr. Hanson came on?—I was not.



*William Bigger* sworn.—Examined by *Mr. Yates*.

I believe you are one of the constables of Manchester?—I am.

Were you in St. George's-fields on the 25th of May last?—I was.

We have heard there were great numbers of persons assembled there, what was their cry?—They wished to have an advance of wages, for they could not support their families.

Did you see Mr. Hanson on the field?—I did, he was addressing the people.

Was he on horseback or on foot?—He was on horseback when I saw him.

With his hat on or off?—With his hat off.

Did you hear any expressions he used?—A few words, that if they would only stick together; his words were, "stick to your purpose and you will gain your ends."

Were the mob peaceable or otherwise?—They were quiet at that time, there was no great rioting to appearance at that time.

Do you remember the magistrates coming on the field?—I do.

Do you recollect at what time Mr. Hanson quitted the field, was it before or after the magistrates came?—I think it was after the magistrates came.

Was it before or after they came that you heard those words?—It was before the magistrates came.

*William Bigger* cross-examined, by  
*Mr. Courtney*.

I believe you have said, he did not do any thing to promote riot that you saw or heard?—I do not recollect.

Do you know Mr. Patterson, who keeps the inn at Manchester?—Yes.

Do you know Mr. Cowdroy? Yes.

Do you not recollect having said to one or both of them that Mr. Hanson did not say any thing to promote riot?—The few words I heard did not promote riot.

Will you swear you did not say to them he said nothing to promote riot?—I cannot.

Do you not believe you did, I have reminded you of the persons?—I cannot recollect.

But I have reminded you of the persons, do you not believe you have said so to those persons?—I do not know.

Do you not on your mended recollection, believe you have said so to Mr. Paterson and Mr. Cowdroy?—I think I have, but I cannot particularly recollect.

#### DEFENCE.

*Mr. Raine*.—Gentlemen of the Jury; In rising to discharge the important duty which has fallen upon me to-day, I assure you I feel a load of anxiety and solicitude, far beyond any thing I have ever experienced, in the course of my professional life. And, you will not be surprised when I say so, called upon as I am, to meet, on the part of this gentleman, a charge of so serious a nature; serious, as applied to any individual subject

of this realm, most particularly so, perhaps, as applied to a gentleman holding such a situation in life as Mr. Hanson does, and still more so, gentlemen, when we see that this cause is brought forward with all the weight and ability that can attend a prosecution conducted under the immediate direction of government. But notwithstanding every defect under which I too sensibly feel myself labouring, in this respect; notwithstanding all these circumstances of disadvantage, under which I am now called upon to address you, I approach the discussion of this great and important case, undismayed. Let me not be misunderstood, gentlemen, when I say that—I trust you will not suppose (none who know me will) that I mean undismayed from any vain confidence in my own strength, of which I assure you sincerely, I entertain a becoming distrust; but it is from a confidence in the truth and justice of the cause in which I am engaged, that I feel thus encouraged; a confidence so absolute, that if I have the good fortune to convey to your minds but half of what I myself feel most strongly, my client will, I am sure, have no reason to dread the verdict, which it will shortly be your duty to pronounce. If I have but the good fortune, gentlemen, to present in a clear and perspicuous light, the view, or even a faint glimpse of the view I have of this case, my client is already acquitted.

Gentlemen, contemplating this prosecution, carried on as it is under the immediate direction of government, I would say a word or two, to obviate a prejudice, that might arise in your breasts, against my client. We are but too apt to conclude, when government have directed a prosecution to be set on foot, that they must have good grounds for doing so, and that they would not raise their arm against an individual without some adequate cause. But, you will never forget that it is with government as with private persons, in making inquiries after evidence; that they as well as others have this to seek for, and are, in the search of it, equally liable to imposition and mistake. And if I wanted a precedent for this, gentlemen, the history of the proceedings that have taken place on this great and important subject, I mean in respect to riots in this country, would afford me an ample and convincing proof; because out of no less than twenty-five men tried for this offence, at the last assizes, eight only were convicted. And here again, let me guard against any misconception of my words: do not imagine, that I wish to force upon your minds any unfair conclusion. Do not suppose I would have you think that because many other persons indicted for offences somewhat similar to this, have been acquitted, Mr. Hanson must needs be innocent, and so entitled to your verdict—God forbid.—I mean no more than this, that if government have, in so many instances, been unsuccessful, it is possible—I do not offend I think—when I say, it is

possible, that in this case also, they may have been misled in their information.

Even without my expressing to you the anxiety which I too deeply feel, you might naturally conclude from the appearance of the case, that I, on this occasion, deserve some little indulgence. But what, gentlemen, is the fact? You see here what a formidable host in rank and talents, in learning and experience, has been called into the field by government, and put in battle array against me. Here, for instance, is my learned friend the Attorney-general, Mr. Park also, and Mr. Topping, all three of his majesty's counsel, and to speak of them with sincerity, undoubtedly stars of the first magnitude. To these are added, *[counts them]* five lesser, still all bright stars, and forming, in the whole, a cluster of northern lights, sufficient to dazzle poor weak eyes like mine into perfect blindness. Be this as it may, feeling as I do the unequal conflict in which I am engaged, I shall address myself to your candor, and if I have the good fortune to possess that, I do flatter myself that I shall, in the sequel, be able to convince you (aye, even after the formidable reply with which we have been threatened, shall have been delivered), of the innocence of Mr. Hanson.

Gentlemen, my learned friend, in the early part of his opening of this case, pledged himself to a line of moderation with respect to Mr. Hanson. Now, I think—and my learned friend will not take it as an offence—but I think it happened to him, that in the warmth of argument he forgot the moderation upon which he had professed to act. This at least struck my mind, when I heard the many epithets with which he thought proper to characterize Mr. Hanson, before the evidence was heard. And though I were to allow my learned friend's right to use such characteristics, yet I must aver, I think them calculated to produce improper prejudices, and especially when their applicability is not made out in a satisfactory manner. What are the epithets which my learned friend, in his mildness and forbearance, has thought fit, on this occasion, to use, with a view to degrade my client? He called him—impudent—malicious—abominable—disloyal—mischievous—wicked and about to be consigned to absolute infamy.—These are some of the epithets which I wrote down at the time with great concern, and which indeed, I am sorry to say, form but a small part of his invective. This is inflaming the accusation a little too much. That there may be in tumultuous assemblies, individuals to whom these expressions might without injustice be applied, I can readily admit; but are we therefore at liberty to put Mr. Hanson on a footing with them, because he happened to be present at a meeting on a particular occasion? Supposing him to be somewhat to blame, is he accountable for every act of outrage which may have been committed by other persons? No, gentlemen, this is too

much for any advocate to hope to convince you of.

In order to enable you to form a full and proper judgment of the case, and that you may have every information that is calculated to satisfy your minds upon it, I shall proceed to describe to you the circumstances relating to these transactions, so far as Mr. Hanson was concerned. You have it already in evidence that the weavers were at one time reduced to a state of extreme distress. This was owing to the pressure of the very portentous war in which we were, and still are engaged. Do not imagine, that it is my wish, in stating this, to excite discontent. God forbid I should do this at any time, much less at a crisis like the present, when we are told by those who know or ought to know, that we shall be called upon in all probability shortly to fight on British ground the battles of our country, with an inveterate foe. And if it be so, is there a British bosom, within which the heart does not burn for the fight, to add one more to the noble army of martyrs? for without profaneness we may be permitted to say, not only they who fight and die in the cause of religion, but they also who fall in defence of their country are martyrs.—And if this battle is to be fought, confident I am, the country will not find within its shores, a more zealous defender, nor one more faithful to its dearest interests than Mr. Hanson. No, gentlemen, it is not unknown to you, how much of his time, aye, and of his fortune too, he has devoted to the service of his country, in training up to arms a regiment of rifle men, and that to a state of discipline, which may be fairly set in competition with that which any of the volunteers of this realm can boast to have attained to. I feel a little personal pride in mentioning this circumstance, because, I belong to that description of individuals, and therefore you will pardon me, if I have gone a little out of the way, in speaking on this subject.

Gentlemen, it was, if I recollect right, towards the close of the year 1807, and the commencement of the year 1808, when the pressure to which I have alluded, fell with most peculiar hardship and severity on the weavers, and for this most obvious reason—because our inveterate enemy had shut the ports of Europe against our trade, thus depriving our manufacturers of the power of exporting their goods, and consequently the weavers of their employment. Thus were they reduced to a state of extreme distress, and that distress they sought to relieve, by an humble representation to the British House of Commons, beseeching them to pass a bill, to fix a standard for their wages, under which they should not hereafter sink. In that application, gentlemen, they had the misfortune to fail; but at that time, and ever since, these matters have been canvassed by political economists, by many of whom the measure has been deemed essential to the welfare of those

classes of the community. In short, it may suffice to say, that the project, when introduced into parliament, has met the countenance of many, whose attachment to the government has never yet become an object of suspicion. Mr. Rose, whose attention has been particularly devoted to the manufactures and trade of the country, and who has made it his most particular study, gave his support to the project of the weavers, in their application to parliament, and if a person of his description favoured the design, can you impute blame to Mr. Hanson for being of the same opinion? or will you, because you may differ from him on this subject, conclude that he is a promoter of riot and disorder?

Gentlemen, you will please to recollect (for it is in evidence) that the intelligence concerning the fate which the bill had met with in the House of Commons, reached Manchester on Sunday the 22nd of May. A communication of this event having taken place was made to that highly respectable gentleman, Mr. Starke, who gave his evidence in a manner that has done him credit. And, what was the consequence? What, I would ask, might one have expected to ensue, when this failure was announced? The first application to parliament had been unsuccessful; but the thing had then undergone but little discussion; on the second, it was discussed more fully, and their expectations were more strongly raised. Why, is it a matter of great surprise, that, at this moment, smarting, as they were, under their distresses, unable to express their feelings,—can it, I say, be thought astonishing, that at such a time the communication of such an event should operate as a violent shock, and make them almost despair of any improvement in their condition? We have been told, that “hope deferred makes the heart sick;” if this be the case, what is hope completely defeated and disappointed likely to produce? But what was, in point of fact, the consequence resulting from this intelligence? What effects did it occasion? Why, gentlemen, all that it occasioned was, a meeting of a small number of persons who assembled together, and conversed upon the subject of their late disappointment. On the following day, namely, on Tuesday the 24th, they did indeed assemble in larger numbers in St. George’s-fields, and that for the purpose of coming to some satisfactory arrangements respecting their demands on their employers. And in what way did they proceed? They had, it seems, appointed delegates—on which step my learned friend has laid some stress. I do not know, on what account this mode of proceeding can be deemed improper. If the whole body had gone, it would have presented at once the appearance of a riot. They, therefore, in my opinion, judged wisely in deputed a few persons to represent their grievances. The delegates, so appointed, went to the magistrates, and begged some means might be hit upon

for relieving their distresses. This application, however, it seems, had not the effect expected. Here, gentlemen, I wish it to be understood, that I am not imputing blame to the magistrates; I believe they were disposed to render every assistance in their power, but I merely state the fact, that it so happened that the application of the weavers was not, or could not be complied with. Then, on their return, you will find, that after some conversation, they all left the field together.

On the following day, the 25th, they unfortunately assembled on the same spot, in still greater numbers. Here I ought to mention one circumstance which is in evidence, and it is this; five or six hundred persons assembled in St. George’s-fields, on Tuesday, the 24th. They were quite peaceable, and were waiting the report of their delegates. Colonel Silvester addressed them, and told them to go quietly home, exerting much to his honour; all the address he was master of, to prevent riot and disturbance. But then, gentlemen, he ordered, and I think it very odd, the Riot act to be read. Why adopt so harsh a step? You are told, forsooth, it is not proper so large a number of persons should be together; that it may lead to riot; that it was desirable they should disperse, and so on. Well, but when we are also told, there was no disposition to tumult, that the men were peaceable and quiet, that they conducted themselves in an orderly, sober manner, I cannot help regretting that they should have been so rigidly treated. I say, I cannot but regret that this step was adopted, because it appears to me calculated to produce the very effect they were endeavouring to prevent. It would irritate the minds, and add fuel to those heated passions, which, I have no manner of doubt, it was colonel Silvester’s wish to check.

We come now to the 25th, but before I enter upon the transactions of that day, it is but just that I should say a word or two about my client. Mr. Hanson is the son of a most excellent man, of whom you must have heard, and who advanced himself to a state of considerable wealth by his industry in this county. Nothing more honourable can be said of any man. He had the good fortune to recommend himself to all around him. His whole life was a continued series of charity and benevolence. And, not to tire you with a tedious account of the virtues of this excellent man, I will say at once that he lived respected, esteemed, and beloved by all who knew him: he lived respected by them, and died not less regretted; and, in the language of an elegant living author, “when he died, he left not a more benevolent heart behind him to lament his loss.” Mr. Hanson is, “of virtuous father, virtuous son.” He had been early trained to habits of business by his father, from the influence of whose precepts, added to the weight and dignity of his example, colonel Hanson imbibed, interwoven, as it were, in his very habits, a spirit of benevolent concern

for the sufferings of the poor. To them he never failed to administer well-timed and seasonable relief on every suitable occasion. I am sorry that I should have to say this in his presence. I know it will give pain to his feelings; but, gentlemen, painful as it is, the case appears to demand from me that I should pay this tribute of justice to Mr. Hanson and his virtues. I will only remind you of one other circumstance: Mr. Hanson, having been long acquainted with the weavers in this county, offered himself, when the dissolution of parliament took place, as a candidate for the representation of Preston. A large body of weavers then thought it right to exact a pledge from their favourite, that he would support their bill in parliament. What was colonel Hanson to do on this occasion? He must not rashly sign this pledge. No, said he, show me your bill, and I will consider it carefully. They did show him the bill, and he did approve of it, as Mr. Rose and many others have likewise done. He accordingly pledged his support, in the event of his being elected. Unluckily, however, Mr. Hanson was a little too late in starting, and therefore did not succeed in this honourable object of his ambition.

We come now to the transactions of the day alluded to. It is a most remarkable circumstance if Mr. Hanson be guilty of the offence charged upon him, that not a tittle of evidence can be adduced to prove, that any conspiracy or meeting of the weavers with Mr. Hanson, existed, previously to the 25th of May. Did he, if concerned in a conspiracy for the subversion of the peace of his country, league with five or six thousand men, to enable him to prosecute it with success? Gentlemen, if he were guilty of the conspiracy charged upon him, I appeal to your own good sense, whether you have not a right to expect from the crown, that they should produce evidence of at least one of these men having gone to his house, and conferred with him on the subject. But what is the fact? The 25th of May is the first day, in which it is attempted to connect Mr. Hanson with this conspiracy.

Mr. Justice *Le Blanc*.—The indictment does not charge the defendant with a conspiracy.

Mr. Raine.—Gentlemen, it is charged as a conspiracy on these rioters; and the conspiracy in respect to them, was an attempt, on their part, to exact an increase of wages [Mr. Raine here read that part of the indictment relative to Mr. Hanson's aiding and promoting the conspiracy of the rioters]. My observation (and I am sure his lordship will not deny it) applies with equal strength to this part of the case. I really feel that it has very great weight, and that it would have been satisfactory to your minds, if they could have shown him leagued with any of these rioters previously to the 25th of May.

This defect, gentlemen, does not arise from any want of zeal in searching for the evidences:

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No, you may depend upon it, that if the fact I speak of had existed, evidence of it would have come out this day. We come now to what occurred on the 25th; it is chiefly charged against Mr. Hanson, that he aided and abetted, by speeches, these rioters: to this I humbly crave your attention. I do think, however strange it may appear, that the indictment furnishes an answer to this charge. The following are the speeches which it charges upon him, as having been made by him when he came into the field. "Your cause is good, and I will support you as far as three thousand pounds; stick to your cause, and I will support you as far as three thousand pounds, and if that will not do I will go further; stick to your cause, and you will certainly gain your ends. Neither Nadin nor any of his faction shall put you off the field this day; stick together, gentlemen, you cannot live by your labour; there is room for six shillings in the cut, and if you cannot obtain that, I will advance you six shillings in the pound." Those who have been employed to fish for evidence, must doubtless know their own cause; and the witnesses, I dare say, told them this speech was so uttered by Mr. Hanson. Now, gentlemen, there are some of you who must be too well acquainted with the nature of this trade, not to know, that such a proposal as that contained in these words, "I will advance you six shillings in the pound," is most extravagant; and to have acted upon it, though his fortune were a mint, would have utterly ruined him. I think, gentlemen, you will readily exonerate Mr. Hanson from the charge of having used these words.

He then goes on to say, "my father was a weaver, and I myself was brought up to that trade, I am their real friend; I would advise you to be steady, and stick to your purpose, and you will gain your ends; but, for God's sake, do not disturb the tranquillity of the country." Not disturb the tranquillity of the country! Does that sound like aiding and abetting rioters? That, however, is part of the charge, that is his departing speech, and I need not remind you, gentlemen, that persons in general are apt to remember the last words they hear; these are commonly the most strongly impressed on their minds. These then are his parting words, "For God's sake do not disturb the tranquillity of the country." Now upon this, Mr. Attorney-general has thought fit to make an observation in his opening speech. Says my learned friend, "this is a colour." What! when I am addressing a large body of persons, if I say, stick to your cause, but do not for God's sake disturb the tranquillity of the country, is that a colour? But how, I would ask my learned friend, would these persons understand such words? Will he say that men not brought up to letters, would put such a forced construction on what they heard? I cannot doubt but you will agree with me, that it is much more natural to think they would take it as it was said.

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and understand plain common words, in a plain common way.

The very last words which he used, according to the charge itself are, "I entreat you not to disturb the tranquillity of the country." What man in his senses, then, can apply these words in the way they would have you think they were intended to be used by Mr. Hanson, namely, with a view to excite these men to tumult? Still my learned friend will have it, it is all colouring on the part of Mr. Hanson; cunning and guile, gentlemen, never found their way into Mr. Hanson's heart. No, where the heart is warm, you seldom find either cunning or guile. So much for that part of the charge, and I cannot help observing that this occurring at the end of it, does, in my opinion, effectually destroy the rest.

And now, gentlemen, with respect to Mr. Hanson's arrival at the scene of action. You will recollect that his house is about a mile and a half from this field. Mr. Hanson had heard that there was a considerable number of persons assembled; he had heard of the rejection of their bill being announced, and that this large meeting was owing to that circumstance. In short, he heard on the Wednesday, that they had assembled again; he likewise knew from the course of his life (and I have no hesitation in saying it), that he was a favourite with the weavers. No man can by mere professions procure to himself that respect, or enjoy the satisfaction which arises from acts of beneficence to the world. You may preach as long as you please, but so long as you do not accompany it with acts of benevolence, it will have no effect. And this reminds me of a story of an archbishop, who was one day accosted by an half-starved beggar, who asked him for a piece of gold; the archbishop, astonished at the impertinence of the demand, replied, No, sir, not a sous; then, father, said the beggar, will you give me your blessing? to which the archbishop said, Aye, kneel down my son. Hold, hold! father, says the beggar, if your blessing is not worth a sous, it is not worth having! and, gentlemen, I am perfectly sure you will agree with me, that the beggar beat the archbishop. But to return to Mr. Hanson; he, gentlemen, not with a view to recommend himself (for he purposely concealed his name), having heard of the great distress prevailing in the county, resolved to distribute a number of loaves, as being, in his opinion, the most suitable way of relieving it. Accordingly the servant is sent with a strict charge not to make it known, and a number of loaves are distributed. He does the same thing with respect to the parish of Middleton, and the township of Pendlebury, thus imitating the conduct of the man of Ross, of whom you know it is recorded as a virtue, that he sought not to recommend himself by blazoning his own virtues, but "did good by stealth, and blushed to find it fame!" He knew, therefore, that by these acts of benevolence and charity, he had recommended himself to the

favour of the poor; and it naturally occurred to him, that he might be doing great service to his king and country, if he strenuously advised them to be peaceable and orderly. With this view he went, and in that spirit addressed them, telling them that if they were sufferers, so were the manufacturers, and entreating them for God's sake to be quiet and orderly. He previously informed some of his friends, that it was his intention to go, because he felt it his duty to do so. My learned friend says, Mr. Hanson had no civil or military character, and would therefore persuade you, he had no business there. Gentlemen, I deny it, on the authority of lord Mansfield, who (speaking of riots) said, it was the duty of a good subject to exert himself to the utmost of his power in quelling them, and that it is highly praiseworthy and meritorious so to do. So says lord Mansfield. But, gentlemen, I have a very remarkable authority for Mr. Hanson's being justified in taking the course he did, and it is not only important in showing you that he was well justified in the course he took, but in another point of view, important in the extreme, inasmuch as it will show how very careful witnesses should be in ascertaining the precise words, where words misrepresented may produce such great mistakes. You will recollect the Birmingham riots; you recollect the circumstance, no doubt; it was a matter of notoriety in the country. A noble lord and honourable baronet, exerted themselves to quell that riot; I am speaking now of an historical fact. This noble lord and honourable baronet composed a hand-bill, in which they styled the rioters, "Friends and fellow-churchmen," but concluded by entreating them to respect the laws of their country. Now, gentlemen, this is, on the face of it, extremely suspicious. Friends and fellow-churchmen! why they were in reality neither the one nor the other, only it was the duty of these persons to soothe and compose the inflamed mob, and therefore they used this stratagem for the purpose. Some time after, the conduct of these gentlemen was called in question in the House of Commons. Their conduct, I say, was called in question; it did appear to be blameable; and they who took it up as a matter of censure, insinuated that they had assisted the rioters on this occasion. The proceedings of this noble lord and honourable baronet being thus brought before the House, an honourable gentleman expressed himself to the following effect:—

[Here Mr. Raine read sir John Scott's speech, concluding with these words:]

"After the most impartial consideration, I am of opinion, that no evidence ought to be received with more caution than that which relates to facts, which took place at a time when men's minds were agitated with fear, and I must protest against any proceedings founded on expressions at a moment of alarm."—Now, gentlemen, who is the person that uses this language? Not a factious demagogue

—no such person. The person who uses this argument, so precisely in point with respect to the present business, is no less than the attorney-general of that day, sir John Scott, now lord high chancellor of Great Britain. Why that appears to me to be most decisive on this subject; for, in a moment of danger, you must endeavour to soothe the people; and for a person speaking on such an occasion, you must remember the greatest possible allowance is to be made.

What then will you say, gentlemen, when I shall prove to your entire satisfaction (and I am enabled to do so) that colonel Hanson so addressed himself to his friends, that he positively told them, what his motive was in going to this assembly, and that this motive was no other than to use his influence with the weavers, to induce them to be peaceable, and to retire? It is repeatedly laid down by lord Ellenborough, that declarations, connected with facts, may be adduced in evidence, and surely it will be a hard matter, if Mr. Hanson may not prove what his object was in going to this assembly. I shall prove that he told a person what his object was. By three respectable persons who dined at his house, I shall prove he then renewed the subject, addressing them in the following manner:—"I think I have some influence with them, and I will use it to the best of my power to prevent disturbance." One of his friends attempted to dissuade him from his purpose, but Mr. Hanson thought he could not satisfy his conscience as a good subject, if he did not use his best exertions for that purpose; accordingly, though dissuaded by a friend, he could not reconcile it to his sense of duty not to go.

Another thing, gentlemen, which stimulated him, was, that colonel Silvester addressed himself to them, unfortunately without effect, and colonel Silvester was a person of much consideration in the county; and Mr. Hanson said, if colonel Silvester is to address them, for God's sake why cannot I? This, therefore, assisted in stimulating him to make his speech. Well, but he went on horseback! and why not? If he was to go at all, it was a mile and a half from his abode; there were many others on horseback; and why should not he? Now, let us attend to his expressions, which you have heard commented upon with so much warmth. No doubt some awkward expressions have been introduced by some of the witnesses; but mark, gentlemen, how they contradict each other, and that in some most material circumstances. But first let me call your attention to the words so often repeated, and on which so much stress is laid—"Stick to your cause, and you will succeed."—Taking it for granted (and it is for the present what you ought to do) that he went there with a view to prevent a riot, and not to promote one: I say, gentlemen, keeping this in mind, is not the expression as referable to another motive, as it is to that charged in the

indictment? That is, not to the exaction of wages from their masters (for you must never forget that this is the ground of the charge) but to the success of their bill in parliament, which was the very cause they had so much at heart? Gentlemen, there is at the present moment (I am sure you will not condemn the weavers for it) a third application before parliament on this very subject. Supposing, then, Mr. Hanson to have used the expression; supposing that he did say to these men, so assembled, "my friends, stick to your cause, your cause is good;" I ask you, with confidence, whether these words are not fairly referable to the bill I have mentioned? If you are of that opinion, if you think these words can, by any fair construction, be thus understood (and I think you cannot doubt it) I have a right to tell you, it is your duty so to consider them, unless compelled by evidence to put another construction upon them. When a man is accused of a crime, if a reasonable doubt as to his guilt exist, it is your duty, in such a case (as I am sure his lordship will inform you) to avail yourselves of it, and to acquit the accused.

And now, having admitted all these words to be so spoken by colonel Hanson, and even upon that supposition having sufficiently proved that they will fairly admit an innocent construction, I shall proceed to show you, that these offensive expressions have not, by any means, been substantiated in evidence. And first of all, with respect to captain Trafford, I have not the slightest doubt whatever, that every thing he did was with the best intentions. When Mr. Hanson came up to him, and desired leave to address the people, captain Trafford told him, he could not allow him to do so. Now it is a very important circumstance for Mr. Hanson, that when he came up on horseback, and made this application to captain Trafford, desiring he would permit him to speak to the people, *he added, that he hoped they would go quietly home.* In addition to this, a most important observation arises: when the captain first spoke to this point, in his evidence, he represented Mr. Hanson's application to have been for permission to *harangue* the people. Now, I do not mean to say, that it was captain Trafford's intention to misrepresent the identical word, but I wish you to see the importance, in such an instance, of attending to particular expressions. Had this matter been left without further investigation, it would have stood upon his lordship's notes, that Mr. Hanson desired to *harangue* the people. He said no such thing. His request was, as you afterwards heard from the witness, that he might be permitted to speak to the people, and that he hoped they would go quietly home, desiring captain Trafford at the same time not to hurt the people; to which, says the captain, my answer was, I certainly would not hurt the people, neither could I allow him to speak to them.

Now, gentlemen, if you find persons like captain Trafford, making such mistakes as these, why may not the corporal, and the rest, be guilty of the same inaccuracies? Besides, with all due deference to captain Trafford, I must tell him, his reply to Mr. Hanson was such as he had no right to make. What! if a man goes to such a meeting with a fair object in view, shall he be refused the liberty of speech? I say, he had a right to speak to them, and I say no man should, with a "blazing scymitar," dragoon me into silence, when I went there, not for the purposes of riot, but to restore tranquillity, as far as my ability would enable me. However, as I have before acknowledged, I entertain no doubt that captain Trafford acted with the best intentions. If, on the other hand, it be argued, that Mr. Hanson really did come there for the purpose of aiding and assisting the rioters, he assuredly chose the most extraordinary opportunity that ever could be selected. If Mr. Hanson had mischief in his heart, why did he not visit these weavers, before the officers and magistrates came up, when he might, without exposing himself to notice, have whispered to them, how they had best proceed to gain their ends? But according to my learned friend he chooses Wednesday, the twenty-fifth, and goes into the field, when the cavalry are all drawn up on one side, and the infantry on the other; in the centre the boroughreeve and the magistrates, with their army of constables, beaded by that redoubtable staff-officer, Nadin! Mr. Hanson, therefore, if he had these mischievous purposes in his heart, selected the very time, when, of all others, he was likely to be marked out for distinction, and with a full consciousness (if he really went for this purpose of promoting riot) that he would be the first victim devoted to destruction.

Gentlemen, there are some men who are said to be in love with difficulties and dangers, and, as it should seem, for difficulties' and dangers' sake. But there are some things that the strongest stomach cannot digest, and I must say, that the man who can swallow this is an object of astonishment and envy to the stone-eater. Mr. Hanson, who might have gone the day before without any risk, selects the only time when he is likely to be detected: then goes on with his harangue, with soldiers at his heels, whom he calls upon as witnesses of his mischief!

What, however, was his conduct? Before he speaks a word, he asks permission of captain Trafford; no, says captain Trafford, I will not let you speak—and then, gentlemen, he goes off a little nettled, and thinks he has been rudely treated by him. You have heard of his being thrown from his horse—he meant to have retired then, and would have retired if he had been permitted to do so; but they were determined to have a speech from Mr. Hanson; accordingly he did mount his horse

and speak. I shall prove to you, by a host of witnesses, that his address to the people, so far from being of the mischievous tendency that has been represented, was singularly calculated to produce the contrary effect, and that the offensive expressions imputed to him never escaped his lips. I have many witnesses who will tell you so, though the corporal with his grey horse let fall his words in such a voluble discourse; but it is very curious to observe that when the corporal comes to another part of his story, he has not got his lesson. No, no, he cannot remember what passed in the attorney-general's speech, and I doubt not but he and the other witnesses have prevailed on themselves to think that most of these words were used by Mr. Hanson. But gentlemen, this is not proved. If I remember right, Mr. Trafford said, that Mr. Hanson, when he got into the road was standing on a mound, and there making another speech. I have no doubt but he did think he spoke from a mound. Captain Trafford might very probably afterwards go to the spot, and find a mound. But, there is one thing I shall shortly advert to; one of the witnesses says distinctly that he made three speeches; but what say the others who were with him the whole of the time according to his own account? I am alluding to the corporal with the grey horse, who said Tynam and Switzer were with him the whole time. They say they only heard him make two. This, therefore, is a complete contradiction, and I shall not dwell upon it. Corporal Wrighton says, that when Mr. Hanson approached, the riot increased; now, another witness has said that it increased long before. But, gentlemen, he further says, the mob declared that they expected one who would do them good. This also is in Mr. Hanson's favour, for they have not shewn whom it was they were expecting. You will not forget, gentlemen, that they expected the boroughreeve's return. Will you say it was Mr. Hanson? I am sure you will not. It is fairly referable to the boroughreeve, and I confidently expect you will so consider it, for at that time they were expecting his return; I am sure you will recollect that circumstance. I insist that the evidence bears me out in saying, that he was treating with the magistrates at that time, and that they were expecting his return; and I do say that you may fairly refer this to the boroughreeve and not to Mr. Hanson. But even admitting it were applied to Mr. Hanson, the expression may be thus explained: they expected one who would do them good by assisting them in their bill, for that, gentlemen, was the transaction to which their thoughts were principally directed. In whichever way you take them, it is evident, that you cannot put any construction upon the words but what is strictly and fairly in Mr. Hanson's favour.

Gentlemen, I said just now that it was in evidence, that a witness had said that the riot had increased before Mr. Hanson appeared.

Recollect, the boroughreeve carried back an answer from the magistrates, and I wish with all my heart it had had the effect of tranquilizing these people. You could not but be struck with what fell from one of the witnesses relative to the effect which Mr. Hanson's conduct had, and which I think must completely convince you, that he had no design to promote mischief, but much the contrary; for when the witness was closely pressed he was induced at last to say, that he believed he had declared in the presence of Mr. Cowdroy and Mr. Patterson, that Mr. Hanson had not done any thing to promote riot.

On the part of Mr. Hanson, I shall call many witnesses, and every one of them will tell you that they were so near to Mr. Hanson from the beginning to the end of this affair, that it was impossible for him to have used these expressions without their hearing them, and which they will have no hesitation in saying was not the case. You will please to recollect, however, that the witnesses I have to produce were not called upon to exercise their recollection as to these transactions, till a period of four months had elapsed, consequently you cannot expect they should precisely agree in terms. They will tell you, however, that so far from using expressions likely to lead to riot, the whole of Mr. Hanson's conduct was calculated to have a contrary effect; and that in short the meeting did disperse.

I mentioned to you, that a short time after the conversation between Mr. Hanson and captain Trafford took place, it was Mr. Hanson's intention to go home. He felt hurt at what had passed between him and captain Trafford, and was resolved to return home. In this design, however, he was really prevented by the people who would have a speech from him. Well, gentlemen, captain Trafford says—"away he went at last, and went at a full trot." And my learned friend says, he slunk away. Gentlemen, he did not slink away like a guilty man, on the contrary it was his previous absolute determination to go home, but the people would not let him. Some stress has been laid on the circumstance of Mr. Hanson taking his hat off; but what would you all think of a gentleman who in addressing a public assembly, should do it with his hat on? You would not certainly suppose, he would be likely to make a favourable impression by such a mode of address. I believe some of my witnesses will tell you, that at the end of his speech, there was an effusion of loyalty. Now, several of these soldiers have sworn to certain expressions of a contrary nature. If you are satisfied of the veracity of the witnesses I shall produce (and they are such as I feel confident you will have no reason to discredit), you must of necessity disbelieve the others.

I fear I have not done that justice to this important case which it deserves. I feel a great concern on my own account, certainly

much more on Mr. Hanson's. I thank you, however, most cordially for the patience and attention, with which you have heard me; and have only to entreat you will bestow the same attention upon the evidence I am about to adduce, and I sit down satisfied that you will deliver Mr. Hanson from this tremendous charge, and pronounce a verdict of not guilty.

*Thomas Appleby* sworn.—Examined by  
*Mr. Raine*.

Mr. Appleby, you live in Salford, I believe?  
—I do, sir.

You are a calico printer there, I believe?  
—I am, sir.

I believe the rifle corps was formerly commanded by Mr. Hanson?—Yes.

You have been acquainted with him from the time you were very young, since a child?  
—I have, sir.

Do you remember on the twenty-fifth of May last, Mr. Hanson calling at your house?  
—Yes, sir.

What time was it when he called?—Betwixt eleven and twelve.

Do you remember his saying—

Mr. Sergeant *Cockell*.—I must object.

Mr. *Raine*.—I submit to your lordship this is clearly evidence. Such evidence was received in the case of Mr. Horne Tooke\* for high treason. The defendant is charged with promoting riot, and when your lordship sees that the words he is charged with having uttered, are equivocal, and bear two meanings, we may shew the declared purpose for which he went to the field; and I submit if we can prove he went there with a view to persuade them to go peaceably home, we can give it in evidence.

Mr. *Littledale*.—I submit to your lordship, that this is evidence as part of the *res geste*. The only question that can arise is, whether the conversations can be considered as part of the *res geste*? for if they be, the consequence follows of course. Now, this is what was said at the commencement of the defendant's purpose, and it is impossible to confine the transaction to one precise spot, or point of time.

Mr. *Williams*.—I consider this as admissible evidence, not only on the ground already submitted to your lordship of its being part of the *res geste*, but as explanatory of the intent, which is in issue. Both the speaking of the words, and the intent charged by the indictment must be proved, or the defendant is intitled to an acquittal.

Now that being so, let us consider what would undoubtedly be evidence against him. Suppose the defendant had, before he left his house, delivered inflammatory speeches in favour of general riot and disorder. Suppose

\* *Vide* the evidence of major Cartwright and others 4 *Hew. Mod. St. Tr.* 330 *et seq.*



it had been proposed to show by evidence that the defendant had put a pair of pistols into his pocket upon setting out; can it be doubted that the fact and the language would be admissible evidence against the defendant? If so, why are not facts of a contrary tendency admissible for him?

Moreover, this is not a singular case. In the ordinary prosecutions for uttering counterfeit notes or money, acts done, and payments made at distant periods of time are received to explain the purpose. If so, why may not the same explanation be allowed, not from remote, but recent and almost contemporary expressions and conduct?

Mr. Justice *Le Blanc*.—I am of opinion that you cannot give in evidence any words but such as were spoken on the field.\*

*John Gray* sworn—Examined by  
Mr. *Littledale*.

You are a schoolmaster, I believe?—Yes, sir.

Where do you live?—In———street, Ancoats-lane, in Manchester.

Do you remember a meeting of the weavers in St. George's-fields, in the afternoon of the 25th May last?—Yes.

Did you see Mr. Hanson and his servant there?—I saw them come up the field.

What time of the day was it?—About ten minutes after four.

Where did he appear to be coming from?—From Manchester.

That is the same road as from his own house at Strangeways?—Yes.

Were the cavalry coming up at that time also?—Yes, they were.

Were they coming up on the same side that Mr. Hanson was, or on the opposite side?—On the opposite side.

Where did Mr. Hanson ride up to?—He rode into the field.

He rode near the weavers, I believe?—Yes.

Was he between where the cavalry were forming and the weavers, or were the weavers between him and the cavalry?—The latter.

When he came up, were you near Mr. Hanson?—Yes, sir, I was about three yards from his horse.

Now what did you hear Mr. Hanson say to the people assembled?—"He understood they were met on account of the petition thrown out of the House of Commons."

Did he mention the word petition, or was it any other word?—A petition, but he hoped they would conduct themselves peaceably and quietly, and they would find a redress for their grievances from the gentlemen of Manchester.

Did you hear him say any thing more to the weavers at that time?—No, sir.

Did you see any officer near Mr. Hanson at

that time?—A military gentleman rode up to him; I could not understand what the military officer said to him, Mr. Hanson put out his hand in this form (*describes the manner*) and said I shall obey orders.

Now up to this time was Mr. Hanson on foot or on horseback?—On horseback, sir.

Was his servant with him?—I did not see his servant at that time, for I think he was a little way off.

Did you observe whether Mr. Hanson continued on horseback, or on foot?—A great shout ensued amongst the people, and the horse raised himself on his hind legs.

What effect did that produce on Mr. Hanson?—He slid off backward.

Did you observe what became of his horse then?—I do not know who got hold of it, he was walking away then.

Which way did he appear to be going?—Towards the lane.

Was that in the road towards his own house?—Yes.

Was he able to get forwards?—He was not.

What prevented him?—The crowds of people.

Did Mr. Hanson continue on foot, or did he mount his horse again?—He mounted his horse.

How near were you to him when he mounted his horse?—I was just on the hedge backward, I might be four or five yards off.

Where was the horse when he mounted again?—In the lane.

Did you hear him say any thing to the people after he mounted his horse?—He said he had been ordered out of the field, and that he had obeyed that order; and he desired them again to be peaceable and quiet, and he was a friend to the weavers, his father's property came through the business, and likewise his.

Did he say any thing more at that time?

—God bless the king, you my lads, and God bless the king.

Did he say any thing else, sir?—I did not hear him say any thing else, he rode off.

Which way did he ride off?—Towards Manchester, down the lane.

Was it towards Strangeways?—Yes, that way.

Did you in the course of the time you were on the ground hear him say any thing of supporting them with three thousand pounds, or any like money?—Never.

Did you hear him say any thing about Nadin and his faction?—Never, Sir.

Did you hear him desire the people to stick to their cause?—Never, sir.

Did you hear him say any thing about six shillings in the cut, or six shillings in the pound?—Never such a word.

Were you so attentive to what he said, that if he had made use of these words while you were near him, you must have heard him?—I am certain I should.

Now, I would just ask you during the time

\* Vide *infra* p. 81.

you were on the ground, what was his conduct?—He desired them for God's sake to be peaceable and quiet.

*John Gray* cross-examined by Mr. Sergeant *Cockell*.

This was a Wednesday, was it?—Yes.

You are a schoolmaster; had it been a holiday?—I leave school at four o'clock.

Was it after four when he came on the ground?—After four.

So your lads were then out of school?—Yes.

Pray, what led you among the weavers?—Curiosity.

Curiosity to be a witness: so when he came into the field you followed him?—Yes.

And you followed him while he trotted on the field?—Yes.

Very well, you did; during all the time he trotted on the field, you trotted after him; Mr. Hanson was on horseback: I know?—Yes.

Well now, master, I would be glad to ask you a question; you saw Mr. Starkie, did you?—Yes.

Of course you heard what passed between Mr. Starkie and him?—No, I did not.

Why, how happened that?—I was not near him.

I mean Mr. Trafford; you followed him all the time from his first coming upon the field, till the time he went off?—Yes.

And of course you went near him when Mr. Trafford was speaking?—I was at the back of his horse.

What did Mr. Trafford and he say?—I did not hear the words.

You know you were at the back of this gentleman's horse, was there no conversation between him and Mr. Trafford?—I did not hear them.

Well then, Mr. Hanson went away from Mr. Trafford?—Yes.

You were at the horse's tail?—I was at the side.

Do you remember Mr. Trafford coming up to him again?—No.

Then you did not see him come up to him a second time?—Only once.

Then after Mr. Hanson had left Mr. Trafford, he did not ride up to him a second time?—I saw him that time.

What time?—When Mr. Hanson said he should obey orders.

Now, sir, upon your oath, if you were there, did you not see Mr. Trafford come up to Mr. Hanson again?—No, I did not.

You did not hear any shout?—Yes, there was a great shout.

Did Mr. Hanson huzza?—I never heard him huzza, I will not swear he huzzed.

Will you swear he did not? Now, sir, upon your oath, did you not hear him?—No.

Then you never heard Mr. Hanson huzza at all?—I did not.

Not at all, nor wave his hat, perhaps?—No, sir.

He had his hat off just as the sheriff's have when they attend my lord to court, never waved it?—No.

Mr. Sergeant *Cockell*.—Well, schoolmaster, I'll ask thee no more questions.

—*Gaskell* sworn.—Examined by Mr. *Williams*.

Of what occupation are you, sir?—Book-keeper.

Do you remember being in St. George's fields on Wednesday the 25th of May last?—Yes, sir.

Were you there before Mr. Hanson came on the ground?—Yes, sir, I was.

You remember his being on the ground, I believe?—I do.

Do you remember his being dismounted, his being off his horse?—I do.

After he had been dismounted, which way did he go?—After he was dismounted, he walked up to Mr. Trafford, and wished to be permitted to address the people.

He spoke to Mr. Trafford before he was dismounted; after he was dismounted, do you know what direction he took?—Yes, I do: he then walked up the ditch side towards the New Road.

Was he leading his horse at that time?—No, he was not.

What was become of his horse?—I do not know.

Was the road he was then taking, towards his own house, towards the Gaping Goose?—Yes.

Is that place towards Strangeways, his way home?—Yes.

Now during the time he was walking along the road-side, how near were you to him?—About five yards from him.

Did you hear him say any thing while walking along the road-side?—I heard him speak to Mr. Trafford; Mr. Trafford told him that he came there to breed a riot.

What said Mr. Hanson to that?—“Mr. Trafford I know your family, and you know mine, and I thought you had known me better than to suppose I should come here to breed a riot; I am come to prevent one, if possible.”

Had he any conversation with Mr. Trafford besides what you have mentioned, in the way from the place where he was dismounted, till he came to the New Road?—No, he had not.

Do you remember his getting upon the New Road?—I do: he mounted his servant's horse when he got to the New Road.

Now having mounted his servant's horse, did he proceed on immediately towards Strangeways?—He was going, but the people came round and prevented him.

Well, did he stop?—Yes, he did.

Did he say any thing?—Yes.

How near were you to him at the time he spoke?—I do not think I was half a dozen yards from him.

He was above the rest of the people?—Yes.

Is the New Road elevated above the field?  
—It is not.

Now being within six yards what did he say first?—The first words I heard him say, were, if they had any regard for themselves, for their country, and their king, they would return peaceably home.

Are you sure he uttered those words?—Yes.

Did you hear him say any thing else at that time?—He told them he was sorry they had lost their bill, but he begged of all things that they would not attempt to molest or injure any one, but return peaceably home. That was all I heard him say.

How long might he be speaking?—I suppose about five minutes.

Did you continue near to him the whole time?—Yes.

During that time did you hear Mr. Hanson say any thing about three thousand pounds?—Not a word.

Did you hear him say any thing about sticking to their cause?—No, sir.

Did you hear any thing said about raising six shillings in the cut?—No.

Or room for it?—No.

Do you understand the expression?—Yes.

If it had been used should you have heard it?—Yes, I am confident of it.

Did you hear any thing said about six shillings in the pound?—I did not.

How long after he had used those expressions you have stated, did Mr. Hanson remain on the field?—A very short time.

The road you have mentioned before, is the road to the sign, which is also the way to his home?—Yes, it is.

During the time you were on the field, what was his conduct?—He was as peaceable as possible, sir.

Did you stay any time after Mr. Hanson had rode off, as you described?—About a quarter of an hour.

Did you observe whether the number of people did the same or not?—A great many of the people that were assembled went away.

How did the people conduct themselves after Mr. Hanson had gone in the direction you speak of?—As peaceably as possible.

— *Gaskell* cross-examined by  
Mr. Park.

Why you never saw a more peaceable set of people assembled?—No, never.

You were quite astonished it was so quiet; the military were there?—Yes.

You went away in a quarter of an hour after Mr. Hanson?—As nigh as I can recollect.

What business had you there?—I went from curiosity.

What hour did you arrive there?—About a quarter before three.

I should like to know to whom you are book-keeper?—Mr. J. Yates, of Manchester.

I suppose you had seen Mr. Hanson speak to Mr. Trafford before?—He spoke to him once on horseback, and once dismounted.

You did not hear what passed between Mr. Trafford and him the first time?—At first, when he spoke to Mr. Trafford, he wished to speak to the people; he told him he came to breed a riot.

Then the first time he applied to Mr. Trafford to speak to the people, he told him he was come to breed a riot, and would not allow him?—Yes.

I am to understand all these conversations which you heard with Mr. Trafford were before he had dismounted—after he had dismounted, he walked up to Mr. Trafford—did he tell him the same thing the second time again?—I did not hear what he said the next time.

Whether you did not hear him speak to the people?—I did not.

Were you near enough to have heard him, if he did speak to the people, the whole time?—I was.

Will you have the goodness to tell his lordship and the jury how this man came to be dismounted?—It was by the noise of the people.

What made him fall off?—The huzzaing of the people.

What was it that occasioned that huzzaing, if it was not his speech?—I do not know.

Pray what were the last words you heard him say, before the horse reared up?—"You know, Mr. Trafford, I know your family, and you know mine, and I thought you knew me better than to suppose I should come here to breed a riot."

What were the last words that Mr. Hanson used to the people before his horse reared up?—I heard him speak to one of the soldiers.

What did he say?—He asked him where his commanding-officer was.

Upon your oath, sir, was not his speaking to the soldier after the time he had spoken to Mr. Trafford?—No, it was not.

What were the last words he spoke to the people before his horse reared up? Do you mean to swear that there had been no words used by this person to induce the people to huzza?—I did not hear any.

But you were so near you could not fail to hear?—I was near enough to hear him speak; I did not hear him speak to the people.

What did he do to occasion the shout?—I do not know.

I ask you again, sir, what he did, if he said nothing, to occasion his horse's rearing up?—I cannot say why the horse reared up.

So the people shouted without his doing any thing: then, pray, sir, will you be so good as to tell, were any soldiers near him when he spoke from the road?—I did not perceive any, I perceived no soldiers near him.

Now, sir, you never heard him say any thing about obeying orders?—He said he was ordered to go off the ground, and that he would do so.

Was it before the shout or after?—It was after.

Was there only one shout?—There was a shout when he rode off.

Was there only one shout? there must have been two at that rate?—I never heard but two.

Did you not think it very odd at the time, that the military commander should tell a man that he would breed a riot, when he was doing nothing at all?—Yes.

Did you hear Mr. Trafford say to him, "I shall take it as a particular favour, if you will go away"?—I did not.

The gentleman, who is the defendant in this case, never shouted at all?—No he did not.

Never waved his hat?—No.

He never bowed to them from right and left?—I never perceived it.

I take it, of course, as he was the man you attended to, you were about him the whole time he was in the field, and yet you never saw him bow from right or left?—No, I did not.

*James Moss sworn.—Examined by Mr. Courtney.*

Do you remember being in St. George's-fields on Wednesday the 25th of May last?—I do.

How came you there?—I am a special constable of the town of Manchester.

Did you see an assembly of people there?—I did.

Did you see Mr. Hanson?—I did.

Did you see him come on the field?—I did.

Were you near him?—I was not far off.

Did you hear Mr. Hanson address the people that were collected there?—I did.

What did he say?—He said "he desired them to disperse and go peaceably and quietly home to their families."

Did you hear him say any thing more?—I did not.

Pray did you see him go off the field?—I did not; I never stirred from my place.

During the time you were near enough to hear Mr. Hanson speak, did you hear him say any thing about supporting the weavers with three thousand pounds?—I did not.

About Nadin and his faction?—I did not.

Did you hear him say, that if they would stick to their cause, they would gain their ends, or to that effect?—No.

Did you hear him say any thing about six shillings in the cut, or that there was room for it?—No, I did not.

Or any thing about six shillings in the pound?—No, I did not.

Now if such words had been used, do you think you should have heard them?—I could not have missed to have done so.

If you had heard them, you would have remembered?—Yes.

What was Mr. Hanson's conduct and the effect of it on the weavers there?—I looked

upon his conduct to be very great, in advising the men assembled there to disperse and go quietly home.

*James Moss cross-examined by Mr. Topping.*

You had not seen Mr. Hanson till just at the time he was dismounted?—I saw him come on the field.

But he was at a considerable distance from you at that time; how far?—Four, five, or six yards.

How many hundreds of people between you and him?—I cannot say.

There was no noise made when Mr. Hanson came on the field?—There was a shout after he spoke to the people.

Why then he had spoken something to the people; what made his horse throw him off?—The noise of a shout.

Then he was on his horse when he made this address to the people; and then they gave a great shout, and he fell off his horse?—Yes.

And pray what brought you from Mount Zion there?—I heard after dinner the people were there; I was a special constable, so I put my truncheon in my pocket and went there.

Having been at your work in the morning and being a powerful man, hearing that this meeting were assembled, you, like a prudent special constable, went after dinner with a truncheon in your pocket?—Yes.

Pray, did you take any body with you?—I went by myself.

Whom did you meet there?—I met numbers: I did not know one weaver that was there.

Did you hear Mr. Hanson enter into a conversation with captain Trafford?—He was not near enough to me.

How long might the interval of his coming on the field, and the time you heard these addresses to the people be?—About ten minutes.

No longer a period of time than ten minutes elapsed, from the time of his coming on the field, till he was dismounted?—I think not.

Did you see colonel Hanson in conversation with captain Trafford more than once?—I did not see him.

You were very near, perhaps you will swear he did not go to speak to him?—He did not, in my seeing; once I did see him in conversation, but I could not hear at all what it was.

Was there no shouting after he left the field?—There might.

But I am asking, when he got out of the field, did you not see him mount his servant's horse?—No, I did not.

*John Seddon sworn.—Examined by Mr. Raine.*

John, are you a groom to Mr. Hanson?—Yes, sir.

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How long have you lived in his service?—From nine to ten years.

Are you a married man?—Yes, sir.

Do you recollect on Wednesday the 25th of May last, what hour it was that your master left his house to go towards St. George's-fields?—I do.

What time had he dined?—It might be about half past one till two.

About what time did he leave his house?—About a quarter after three.

On horseback?—Yes.

Did you accompany him on another horse?—I did.

About how far is Strangeways-hall from St. George's-fields?—It may be about a mile and a quarter.

What pace did you and your master go from Strangeways-hall to St. George's-fields?—Walked our horses all the way, or nearly.

About what hour might it be when you got to St. George's-fields?—It might be within twenty minutes of four o'clock.

When you got there, there were a great number of persons assembled?—There were.

Were they armed with any weapons?—I did not see any.

Do you remember seeing the cavalry?—do.

Were they formed in a line?—They were formed in a line, and my master rode up to them.

What did your master say to any one of the soldiers?—He asked where the commanding officer was.

Did the soldier tell him where he was?—He told him he was in the rear.

Did you happen to see, after that, whether the soldier went to the rear?—My master asked him the second time; I suppose my master did not understand him the first time.

What was the answer the second time?—He said he was in the rear.

After that, did you see the soldier go towards the rear?—I did.

After that, did an officer come up?—He did.

What said your master to the officer?—He bowed to him, but I cannot say what was the first word; I heard him ask him, if he would allow him to speak to the people; and the officer said he would not.

Do you remember the officer saying any thing more?—Not at that time; some few words passed, but I cannot recollect what they were.

Do you remember your master's horse rearing up?—I do.

He slipped off behind?—He did; he alighted upon his feet.

His hat fell off, and was given to you?—It was.

How long was he on foot before he mounted again?—It perhaps might be about five minutes.

What horse did he mount?—He mounted the horse I rode.

Was he a steadier horse than the other?—He was.

Did you see your master, after that, go up to the officer again?—Not after he mounted.

But when he went up to the officer again on foot, tell us what the officer then said to your master?—He asked him if he was come there to commit a riot.

What did your master say in answer to that?—He said—"I am not; you know my family, and I know your's;" he says, "I have too great a regard for your family," he says, "than to come here to commit a riot."

What more did your master add?—I did not hear any thing that passed between them any more.

Now, after this passed, do you remember your master saying any thing to you?—I do; he said he was ordered out of the field; I asked him if he would mount his horse again, and he said he would not; he would walk out of the field; and he walked out of the field, and I walked out after him, with the horse I had ridden, and he walked till he came near to the turnpike-gate; it might be about five or six yards nearer the road, and a large quantity of people gathered round him.

Did he then mount any horse?—He then went a little further, till he got into the lane, and then he was surrounded by more people.

Where was your master going at the time he was thus surrounded?—He was going towards home.

When you talk of his being surrounded, do you mean he was stopped?—He was stopped by the people; he stopped in the lane, and he mounted his horse, the horse which I had ridden.

After he got on horseback, did he then attempt to get away?—It appeared to me that he did.

What stopped him then?—The people seemed to wish to hear what he had to say.

Did your master then address them?—He did.

What did he say?—He first mentioned that he had been ordered out of the field; I cannot say the words that followed after; I remember him desiring them to be peaceable and quiet, and to go home.

What more did you hear him say?—He said, "if they had any regard for their king, any regard for their country, any regard for themselves or for him, they would disperse quietly and go home."

Did the people make any answer to that?—They said they would.

What did your master, upon that, say to them?—I cannot say any further, not particularly; he said further, but I do not recollect the exact words.

Now, after your master had finished addressing the people, did they then go home?—They did.

Were you near your master the whole time?—I was.

Now be so good as to attend to what I am saying. Do you remember him saying any thing of this kind to the people?—"Your cause is good, and I will support you as far as three thousand pounds?"—I did not.

Did you hear him say any thing of this kind—"Stick to your cause, and I will support you as far as three thousand pounds will go; and if that will not do, I will go farther?"—I did not.

Any thing of this kind—"Stick to your cause, and you will certainly succeed; neither Nadin, nor any of his faction shall put you off the field to-day?"—I did not.

Did you hear him say any thing of this kind—"Stick together, and you shall gain your ends?"—I did not.

Any thing like this—"You cannot live by your labour; there is room for six shillings in the cut, and if you cannot obtain that, I will advance you six shillings in the pound?"—I did not.

Now, if he had said any thing of this sort, must you have heard it?—I certainly must.

Do you remember your master saying any thing to them about their bill?—I remember something of the kind, but do not remember the precise words.

What was your master's conduct, as far as was in your observation, during the whole of the time he was in that road?—It appeared to me he was very anxious to disperse them, and for them to go home peaceable and quiet.

Now, John, you have lived with your master nine or ten years?—Yes, I have.

You have had an opportunity, of course, of observing his general conduct?—I have.

First, I will ask you as to his charitable disposition?

[This question was objected to by Mr. Sergeant Cockell, and was not put.]

*John Seddon* cross-examined by  
Mr. *Holroyd*.

You are groom, now, I believe, to col. Hanson?—I am.

How far were you from him when you first went up to captain Trafford?—About five yards, or six.

Were you behind him?—I was a little on the side.

You heard your master ask him if he would permit him to speak to the people, and captain Trafford said he would not?—Yes.

Were you so near as to hear part of what passed, and not to recollect what it was?—Yes—sometimes the horse would not be steady.

Now, I ask you, whether you did not hear captain Trafford say he would be particularly obliged to him to go off the ground?—I cannot say.

What made your master's horse unsteady?—It was the glittering of the swords of the soldiers.

There were not many people about your master and captain Trafford at that time?—No; not at that time.

Now, will you swear you did not hear captain Trafford desire your master not to address the people?—I did not hear him say that.

You swear that you did not hear him say so?—I did not hear him say so.

Was not your master's charger the horse that he rode?—It was not; the one I did was.

Now when your master went away from captain Trafford, he addressed the people; did not he?—No; he did not; he did not address any people before he came from his horse.

What made his horse rear?—It was the soldiers, and the shining of the swords.

Then it was not the shouting that made him rear?—No, I cannot say it was.

I believe, that when your master slipped off behind, there was no shouting?—No.

How far were you from your master at that time?—Not more than five or six yards.

Then will you swear he did not address them?—He did not address any people at that time.

When your master went away, he began by telling the people he was ordered off the ground?—Yes; after leaving the field, he did.

Did you not hear captain Trafford tell him—"he could not order him off the ground, the Riot act had not been read?"—I did not.

How long was he speaking, then?—Not more than ten minutes at that time.

*John Seddon* re-examined by Mr. *Raine*.

At the time that the horse reared, were not the swords of the cavalry drawn?—They were.

And it appeared to you that they glittered?—It did.

And it appeared to you, that the horse reared in consequence of that?—It did.

*George Bluntson* sworn.—Examined by  
Mr. *Littledale*.

Where do you live?—In Salford.

What are you?—An officer of excise.

How long have you been such?—For twenty-five years.

Do you remember, on the twenty-fifth of May, being in St. George's-fields?—I do; I met with a friend, who asked me to go, out of mere curiosity.

What time did you get there?—A little past three o'clock.

Did you see Mr. Hanson come on the ground?—I did, sir.

Where did Mr. Hanson first go, when you saw him?—When I first saw him he was come opposite the ring, where the delegates and gentlemen were together.

Did you lose sight of him?—I did; I lost sight of him for about five minutes.

What was he doing when you saw him again?—When I saw him again, he was come up towards the road, and the people surrounded him.

Did you, when you saw him get on horse-back, get near him?—I immediately perceived he was saying somewhat, and I made up.

What did you hear him say, then?—As soon as I got up, I could not understand what he was about; the first thing I heard him say, was, "he felt for the weavers' sufferings as much as any man;" and then he said, "he hoped they would consider the badness of the times, for he was sure the manufacturers were suffering a little as well as they were; therefore he had to beg they would do nothing against the laws of the country, and put confidence in their delegates, and they would do every thing in their power to get their distresses relieved; and he begged they would go to their respective homes; and he had further to observe, his father was a weaver, and he was a weaver born; and that the property he enjoyed had come from the weavers, therefore he was in duty bound to be their friend, which they might depend upon it he always would, whenever it was in his power;" then there was a loud huzza, and I heard somebody cry out about their bill, but I could not distinguish whether it was about Mr. Hanson or the populace; the horse moved about with the shouting, and then I got rather out of the way, and I did not hear what he said about their bill; I got a little bit further, then I heard him say again, "that the property he had, certainly came from the weavers; and if they would behave peaceably, and return to their respective homes, he would do every thing in his power for them; and if they loved their king, their country, and him, they would do as he had desired them."

Did you hear any thing else?—When he was gone off the field, I staid amongst the weavers, and about that place about half an hour afterwards.

Did you hear Mr. Hanson say any thing else?—No, I did not; he went away.

Did you hear him say any thing about three thousand pounds, or Nadin or his faction, or six shillings in the cut or pound?—No.

If he had said so during the time you were there, should you have heard him?—Yes.

What was his conduct there?—From all I saw and heard, his conduct appeared to me to be very plausible, to be very proper, very good for giving them such advice.

After Mr. Hanson was gone, did the same number of people remain there, or were they dispersed?—No, a great many followed him.

But did those that followed him go as quick as he did?—No, they could not go as quick as he did.

He was not walking his horse?—No, he went off on a trot.

*George Bluntson cross-examined by Mr. Scarlett.*

You say it was about a quarter past three when you went?—Yes.

What was the name of your friend?—John Lyon.

Is he here?—No.

But you got into the field about a quarter past three?—Yes.

How soon after did you see Mr. Hanson?—A little past four.

You said something about the gentlemen and the delegates being in the ring; by the delegates you understand persons deputed from the mob?—Yes, Mr. Lyon and I had a deal of talk with the manufacturers.

All the gentlemen and the delegates were in the ring?—Yes.

Did Mr. Hanson go into the ring?—I could not see him.

The gentlemen and the delegates were there, you suppose, trying what they could do to get the mob away?—Yes.

When Mr. Hanson came he did not go amongst the gentlemen and the delegates?—No.

As you went up you said he was talking to the people telling them how he was used on the field?—I understood so.

What were his expressions?—I heard him say he was not gentleman-like treated, or something of that sort.

By whom?—I do not know.

No mention made of Nadin and his faction?—No.

You never heard him say a word on foot?—No.

But what was the ungentleman-like conduct he complained of?—I do not know.

Was he very calm and temperate?—Why as much as you could suppose of a man in that situation.

You seem to make a distinction between a mob and a number of people. How many might there be?—About eight or ten thousand in different parts of the field.

You were never alarmed at it at all?—No.

You thought it ridiculous for any body to be alarmed?—I did.

You did not think it at all necessary to try to disperse them?—I did not see any necessity in the world as long as they were peaceable and quite; they only wished to have more for their work, and they were only staying while the delegates came from the town.

Did you stay on the field till the Riot act was read?—Yes.

Did you not know the magistrate who read it?—No, I was not so close.

Did you not see the magistrate who read the Riot act?—I do not know who did, Mr. Farrington was there.

Did you not see Mr. Farrington while he was in the act of reading the Riot act?—No, he was reading something, but I could not hear it.

You did not stay to hear it all?—I staid till about half-past five.

*Mr. Edward Shepley sworn.—Examined by Mr. Courtney.*

Where do you live?—In London-road, Manchester.

What are you, pray?—Clock and watch-maker.

Do you recollect a large assembly of people in St. George's-fields, Manchester, on the twenty-fifth of May?—Yes.

Were you on the ground?—Yes.

What time did you go there?—I went in the morning.

Did you in the course of the day see Mr. Hanson in the field?—Yes, I did.

You were there all day?—Excepting the time I got dinner.

Did you see him come on the field?—I did not, sir.

But you did see him there?—I did.

Did you hear him address the people in the field?—I heard the noise, sir, and I turned my head, and I saw a quantity of people drawing towards the lane, I went towards them, and Mr. Hanson I heard address the people.

Were you near him then?—Yes, sir, within ten or twenty yards.

Did you hear him address the weavers?—Yes.

On horseback?—Yes, he said "I have been ordered out of the field, and I obeyed that order;" he said he was exceedingly sorry for them; he said he was sorry their bill was thrown out, but he begged they would continue to be peaceable and quiet; and he begged they would disperse, and go quietly home; he endeavoured to convince them that was not the properest way to attain their ends; immediately after that he rode off.

Was that all you heard Mr. Hanson say?—It was the chief of what I heard.

Did he in your hearing say any thing of his determination, to support them with three thousand pounds?—Not that I heard.

Did he mention any words like these:—

"Stick to your cause, and you will gain your ends, neither Nadin nor his faction, shall put you off the field to-day?"—No.

"That they could not live by their labour, and there was room for six shillings in the put?"—No.

"And if they could not obtain that, he would advance them six shillings in the pound?"—No.

During the time you were on the field, you did not hear Mr. Hanson make use of any of those expressions?—I did not, sir.

What was Mr. Hanson's conduct altogether, as far as you saw?—As far as I saw, he endeavoured to convince them that was not the way to obtain what they wanted, and to persuade them to go home.

Did the same number of people appear to remain in the field after he went away?—When he rode off, they appeared to disperse.

Mr. Edward Shepley cross-examined by  
Mr. Yates:

This is the first time you saw Mr. Hanson in the field, you say, as he was leaving the field and going towards the lane?—Yes.

How long did you stop on the ground after Mr. Hanson went away?—I did not stop any time.

You had been there from nine in the morning till four in the afternoon, except dinner?—Yes.

What was your business there?—I went, seeing a parcel of weavers pass from Stockport, and I went immediately afterwards.

You are not a weaver, you know—what had you to do with the delegates raising their wages?—I had nothing at all to do with it.

Mr. C. B. Stennett sworn.—Examined by  
Mr. Raine.

I understand you live upon your own property in Manchester?—I do, sir.

Do you remember on Wednesday the twenty-fifth of May, being in St. George's-fields, and seeing Mr. Hanson come up?—I do, sir.

Mr. Justice *Le Blanc*.—Did you see him first come into the field?—I did, my lord.

Mr. Yates. —Did you know captain Trafford by sight, Mr. Stennett?—I do, sir.

Mr. Justice *Le Blanc*.—Did you at that time?—I did, my lord.

Mr. Yates. —Do you remember captain Trafford coming up to Mr. Hanson?—I do, sir.

I believe Mr. Stennett, you did not happen to hear what captain Trafford said?—I did not, sir.

Did you see him address himself to Mr. Hanson?—I did.

But did not hear what he said?—I did not, sir.

Did you hear what Mr. Hanson said in reply?—I did; Mr. Hanson said, "I thought you had known me better (I respect, you know, your family much) than to suppose I should come here for such a purpose as to breed a riot."

Did Mr. Hanson at that time say any thing more to captain Trafford?—He said, "I came here to assist in quelling one," that was all I heard pass between Mr. Hanson and captain Trafford.

Did you happen to see Mr. Hanson when he was dismounted?—I did.

Did you see him, after he was dismounted, at all engaged in conversation with captain Trafford?—I did not.

After he was dismounted what way did Mr. Hanson go?—He went towards the New Road which is towards Manchester.

And would carry him towards home?—Yes. Now in going towards the New Road was he stopped at all?—Yes.

What by?—By a number of the weavers.

After being so stopped, did you happen to see whether he mounted his horse?—He did.

What did the weavers say or do?—They wished him to address them.

After they had expressed a wish that he should address them, did he address them?—He did.

Before he was stopped, did he appear to you to be going away?—He did, sir.

Tell us what Mr. Hanson said when he ad-



dressed the people?—He told them “to go peaceably and quietly home, if they had any regard for him or any regard for themselves.”

Do you happen to remember whether any thing was said about being ordered off the ground?—“He said he had been ordered off the ground, and he had obeyed those orders;” he said, “he was sorry they had lost their bill, that he had no doubt that when the legislature would be rightly informed on the subject, they would yet obtain it.”

What more did he add, Mr. Stennett?—I heard him say nothing more.

But this you are sure you heard him say?—I did, sir.

Give me leave to ask you, Mr. Stennett, during the whole of the time you saw Mr. Hanson on the field what his conduct was?—He appeared very anxious for them to return peaceably home.

Whether in the course of his address, he said any thing of this kind “he would support them as far as three thousand pounds, and if that would not do, he would go further, that Nadin and his faction should not put them off the ground, that they would gain their ends, that the weavers could not live by their labour, there was room for six shillings in the cut, or if they could not obtain it, he would advance them six shillings in the pound;” Did you hear him use any such expressions?—No such thing.

If he had used any such expressions must you have heard him, Mr. Stennett?—Undoubtedly.

Now after Mr. Hanson left the ground, what did the weavers do?—Great numbers of them dispersed.

How long did you stay on the ground after Mr. Hanson left it?—Nearly a quarter of an hour.

During that time had they gone off in any numbers?—Many had.

Mr. John Carr sworn.—Examined by  
Mr. Littledale.

Mr. Carr, you are collector of excise for the division of Manchester?—I am, sir.

Had you the curiosity to go into St. George's fields, on the twenty-fifth of May last?—Yes, sir, I was there.

Now, when you got there, how did you find things?—There were a great number of people there, they appeared to me different classes; the people my lord, whom I took to be weavers, were on what is called St. George's-road, the road to Shudhill.

How did they appear to be, quiet or tumultuous?—They were standing still all of them.

Were the soldiers there when you got there?—Yes, they were.

Was Mr. Hanson there when you got there?—He came soon after, I believe about ten minutes after.

A little time after you had been there, was there any thing that attracted your attention?

—I was not near Mr. Hanson when he came to the ground, I was on the side towards the country, he came towards the lane.

Now what attracted your attention first in particular?—I saw Mr. Hanson come on the ground with his servant, but I did not follow him with my eye, the next time I observed him, he was speaking on the top of a hill, a mound of earth, to the people, the men were on the mound, not Mr. Hanson, they formed a sort of a fence from the top of the field.

How was Mr. Hanson situated?—Mr. Hanson was facing them on horseback, and almost amongst them.

On the field or in the road?—It was at the top of the field, within a few yards of the road.

Did you get near to Mr. Hanson?—I was not near enough to hear him, I was about twenty yards from him on his right.

Did you hear any part of what he said, though you did not hear the whole?—I heard a few occasional words, I did not hear one direct sentence.

Will you tell us what you did hear?—I cannot recollect the precise words, the impression made upon my mind at the time was, he was comforting them, he did not speak very loud, or I should have heard him probably, there appeared then a marked attention to him all around; and when he had done, they said “Hanson, huzza!” and he moved his hat in return.

Mr. Carr, at the time he went away, did all the people continue; or did some of them go away?—The people appeared to move the way he went; but why, I cannot say; I set off towards the country.

Mr. John Carr cross-examined by Sergeant  
Cockell.

Was this speech after he fell from his horse or before?—It was before he fell.

Mr. Justice Le Blanc.—Did you observe what horse he was upon?—I think it was a white horse, my lord, that he came on.

Was he addressing the people from the white horse?—I think it was, my lord.

Mr. Sergeant Cockell.—Did you actually see him fall yourself?—No, I did not; I heard the people around me say, he is fallen.

Did you see Mr. Hanson go towards the public-house?—Towards that part of the lane where the public-house is; the public-house is more to the right; but it is in that direction.

How long before he went that way was it you heard him address the people in the way you stated?—Not many minutes.

How long had you seen him coming across the field before you heard him speak in this way?—Not many minutes.

Had he a servant with him?—I saw the servant behind him.

Yes, but did you see the servant with him when he was in the part of the field near you?—I cannot say; there were a body of infantry near enough to hear him speak.

Mr. Justice *Le Blanc*.—You did not see him any more after you went away?—I did not, my lord.

How many roads are there over this field, or the side of the field from Manchester?—There are, properly speaking, three; there is one to St. George's-road, there is another to the country, and one called Newton-lane.

Mr. *John Carr* re-examined by Mr. *Raine*.

When you heard them say he was down, was he going towards the Gaping Goose?—He was not going, but he would turn to it.

Was the cry "he is down! he is down!" the first thing that drew your attention to Mr. Hanson?—I recollect Mr. Hanson riding into the field with his servant. From what I recollect, it appears he was speaking before I heard the cry of "he is down!" I think I never saw him at any time on his feet.

*Charles Satterthwaite*, esq. sworn.—Examined by Mr. *Williams*.

Mr. Satterthwaite, you, I believe, were in Manchester on the 25th of May last?—I believe that was the time.

You were in St. George's-fields?—Yes, I was. Do you remember seeing Mr. Hanson there?—Yes, I do.

In what part of the field did you first see Mr. Hanson?—It was on the right of the military: it was nearer the Bury-road than the military.

Do you know the New Road at all, Mr. Satterthwaite?—I do not; it was on the west side, I believe, of St. George's-fields.

Was he on horseback, or on foot?—He was on horseback.

Were the people about him?—Yes, they were.

Was he speaking at the time?—He was speaking at the time, I was attracted to the spot by the huzzing of the people.

Did you come near enough to the spot to hear what he said?—I came in time to hear what he said.

State as nearly as you can, what you heard Mr. Hanson say?—It was mostly the concluding part of his address, I did not hear the beginning.

What were the words you heard him utter as nearly as you can represent to us?—The first was after an huzza was finished, and he then commenced again by saying, "I have one request to make, which I hope you will not refuse;" he seemed to be playing with the people, to bring them into good humour; there were some females present and some men: he said, "the ladies, I am sure will grant my request.—I have always found them more polite than the gentlemen; and I have most particularly to request, that you will all go home. Your remaining here can answer no purpose whatever, and I beg and intreat you to disperse." He then rode away. Those, my lord, were, as nearly as I can recollect, the words I heard Mr. Hanson utter. Having heard Mr.

Hanson's address much misrepresented, I cannot be positive that those were the words verbatim; but I think what I have stated is pretty nearly correct.

You say, sir, he then rode off?—Yes.

Now do you know that part of the town sufficiently well to be able to state whether he rode in the direction of his own house?—I do not: he rode in the direction towards St. George's-fields: he rode along the field in a direction from the church.

Was it from the church towards Manchester?—It was towards the body of the town.

Mr. *Joseph Oliver* sworn.—Examined by Mr. *Courtney*.

Where do you live, pray?—Hardy Green, near Manchester.

What are you?—A traveller.

Do you remember a large assembly of people in St. George's-fields on the 25th of May last?—I do.

Were you on the field that day?—I went on the field in the forenoon that day, about eleven o'clock.

Did you see Mr. Hanson come on the ground?—I saw him on the ground.

About what time?—It might be about four o'clock.

Was he on foot or horseback?—Horseback.

Were you near him?—Not at first; I followed him into the lane, and then I got near him.

Did you hear Mr. Hanson address the people that were round him?—I did sir.

What did he say to the weavers?—He exhorted them to be peaceable and quiet, and desired them to go home peaceably.

Did he say any thing about the bill?—He said he was sorry for the bill, and all that he could do to serve them he would.

Did you hear him say any more?—He told them in what manner his money had been got; that his father had been a weaver, and that most of their money had been got by that practice.

Pray did you hear Mr. Hanson say any thing about supporting them with three thousand pounds—about Nadin or his faction—that they could not live by their labour—or that there was room for six shillings in the cut or pound, or any thing of that sort?—He did not.

What was Mr. Hanson's conduct in the field as far as you saw or heard?—It was that of a gentleman, and a good subject to his king and country.

Mr. *Robert Norris* sworn.—Examined by Mr. *Raine*.

Mr. Norris, do you live in Manchester?—Yes.

Do you remember on Wednesday the 25th of May seeing Mr. Hanson come into St. George's-fields?—I do.

Whereabouts did you see him first, when

you were near him, Mr. Norris?—I never saw him till he was out in the lane.

Did you see him in the act of going from the field?—I did not see him till he was in the lane.

Now when he was in the field, were there many persons near him or round him?—Yes, many round him.

Did he address them?—He did.

Were you near enough to hear what he said?—I went immediately towards him, and placed myself on a mound, or rather an hedge, or an elevated spot.

And were you then near enough to hear what Mr. Hanson said?—I was.

What was it you heard him say; did you hear the very first part?—I did not: he was speaking at the time I came up; I heard him say he was sorry for them; he was sorry they had lost their bill. He said that his father had gained most of the property he enjoyed by their industry and their endeavours; that he was a friend to them, and would continue to be so, provided they went away, and departed peaceably and quietly.

Do you recollect whether he added any thing else?—He said if they had any regard for him or for themselves and families, they would immediately depart and go home.

Did you hear any answer given to this by any of the weavers?—I did, they accompanied it with an huzza.

Did you hear them, after Mr. Hanson had finished his address, say any thing to him?—I did not: Mr. Hanson rode off almost immediately.

Give me leave to ask you whether you ever heard Mr. Hanson say any thing to this effect, "that he would support them as far as three thousand pounds, and if that would not do he would go further. That Nadin or his faction should not put them off the field. That they could not live by their labour; there was room for six shillings in the cut; and if they could not obtain that, he would advance them six shillings in the pound"—did you hear any thing of that kind?—I did not.

If any such expressions had been used, must you have heard them?—I must.

Now so far as you had an opportunity of observing, what did Mr. Hanson's conduct appear to be?—It appeared that of a friendly adviser, for the people to go about their business and go home.

Now after Mr. Hanson went away, did any of the weavers go?—A good many went, and I am confident of it.

Mr. Robert Norris cross-examined by Mr. Cross.

You perceived them go; did you see them throw brick-bats at the soldiers?—No.

Did you see any misfortune happen?—I did not.

You say you did not hear him say the words which my learned friend has stated to you?—I did not.

Mr. Kearsley sworn.—Examined by Mr. Littledale.

You are a fasten-cutter, I believe?—Yes. Did you go to St. George's-fields on Wednesday the 25th of May?—I did.

What made you go there?—I went to get a view of my workmen.

What time did you get there?—Betwixt two and three o'clock, sir.

Did you see Mr. Hanson come on the ground?—I saw him betwixt three and four o'clock, sir.

He came in the way from Manchester, did he not?—Yes, sir.

When he came up, were there any weavers near him?—I saw him come into the field, and some weavers did come around him.

Did you hear him say any thing to them?—Yes.

What did you hear him say?—He said, "his father was a weaver, and he was a well-wisher to the weavers, and if they were well-wishers to themselves, he hoped they would go home."

Was that the first time you heard him speak to the weavers when he said that?—Yes.

This is the first address in the field; did you see Mr. Trafford at that time?—Yes.

Did he say any thing else than what you first told us?—He went to the circle; he went to the circle before he said any thing.

I wish you would tell us what you first observed him do or say?—When he first went into the field, the weavers went round him, he wished them to go quietly home.

After this did he speak to Mr. Trafford?—Yes, Mr. Trafford spoke to him.

Tell us what you first observed, and then go on in order?—Mr. Trafford ordered him to quit the ground, that was the first thing I heard on the field after the weavers came round him.

Did Mr. Trafford come up before that, or after?—Mr. Trafford came up after.

When he first came on the ground, the weavers came round him and he spoke to them, and after that Mr. Trafford spoke to him: what did Mr. Trafford say to him?—He asked him to quit the ground, and he said if you are a well-wisher to the government, you will do it; he went from Mr. Trafford towards the New Road.

After Mr. Trafford desired him to quit the ground, did you observe whether he slipped off his horse?—He slipped off his horse as he was going towards the New Road.

Did you follow him to the New Road?—I did.

Did you hear him speak to the people at the New Road?—Yes.

What did he say there?—He said, "gentlemen, I hope you will go towards your respective homes, as I believe the manufacturers are as much perplexed in their minds as you are," he said, "his father was a weaver, and he was a well-wisher to a weaver, and if you wish me

well, your king, and your country, you will go to your respective homes;" he went down the New Road, and he was stopt towards the Gaping Goose, by some people near to George's Road; the people addressed him in this form, "that their bill had not taken place;" he said he was sorry, and he would make every effort that lay in his power to get it on, if so be that they would be peaceable and quiet.

Was any thing else said?—Yes, the last words I heard him say were, "if you are well-wishers to your king and country, gentlemen, disperse and go to your own homes."

Did you hear him say any thing about supporting them as far as three thousand pounds, that Nadin or his faction should not put them off the ground, there was room for six shillings in the cut or pound?—I never did.

Now, after Mr. Hanson was gone, did the people continue there, or did they disperse?—Yes, perhaps by a dozen, or twenty together, a great many lots of them.

Mr. Justice *Le Blanc*.—Did you see him at any time off his horse?—Yes I did.

How long did he continue off his horse?—A very few minutes.

What was he doing when he was off his horse?—He was going towards the New Road.

When he said, "gentlemen, I hope you will go to your respective homes," was he on his horse?—He was on his horse.

As he was going along the road side, he wished them to disperse, then he was on his horse; he was afterwards stopt again you say?—Yes the people stopt him on the road.

Mr. John Speerit sworn.—Examined by  
Mr. Williams.

You live in Manchester I believe?—I do.

What are you?—A porter.

Porter for another, or master porter?—Master porter.

You, I believe, were in St. George's-fields on the 25th of May last; were you there before Mr. Hanson came on the ground?—I remember him coming up the road.

Going or coming?—He was coming towards the field.

Was his servant with him?—Yes, he was on horseback.

How near were you to Mr. Hanson, when he came upon the field?—He rode past me, I was standing on the road side.

Were the people about you?—There was a large ring of people.

Did Mr. Hanson stop there, or did he ride on?—He rode on towards the cavalry.

Did he say any thing that you heard, as he passed by this place you call the ring?—He said nothing.

Did you see lieutenant Trafford on the ground?—I did not know him.

When was the first time you saw him?—The first time I saw him again, was when the horse reared.

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How shortly after that did you come up to him?—He was getting upon his horse by St. George's Road, it is otherwise called the New Road.

Did you hear Mr. Hanson say any thing on St. George's Road?—Yes.

How near were you to him?—I touched him at the time.

Was he upon his horse at the time?—He was.

What did he say on this occasion?—He was attempting to go off, but they stopped him, and they wished him to speak to them, and he said, "he had been ordered from the field by captain Trafford, he might be a good officer and a loyal subject, he did not dispute it, and he was happy to say he was the same, and he hoped there was not a man on the ground otherwise," he said, he had accused him of coming there to breed a riot; he said he was the reverse, he came there to quell one; and particularly requested them to be peaceable and quiet, for their meeting there was of no service.

Did you hear him say any thing else?—He particularly requested them to attend to what the magistrates said, as they were the only people to apply to; he particularly requested them to be peaceable and quiet, if they persisted in meeting.

Did you hear him say any thing else then?—No, I cannot recollect that I did.

Were you close to him the whole of this time?—I was very nigh to him.

Did you hear him say any thing about supporting them with three thousand pounds, or that Nadin or his faction should not put them off the ground?—No.

Or that there was room for six shillings in the cut, or that he would advance them six shillings in the pound?—I did not.

What was Mr. Hanson's conduct on the ground during the time you were there?—Very peaceable and quiet, very good as far as I judged.

Mr. James Brocklehurst sworn.—Examined by  
Mr. Courtney.

Where do you live?—At Hayfield in Derbyshire.

What are you?—I was lately a cotton spinner, but am now in no business at all. I have retired since last May.

Were you in St. George's fields on the 25th May last?—I was on the road side.

Did you see Mr. Hanson?—Yes.

What time was that?—Betwixt three and four.

Did you hear Mr. Hanson address the people?—Yes, I did.

What did he say to them?—To the best of my knowledge, when I went down to Mr. Hanson he was telling the weavers he was ordered off the field by Mr. Trafford, who had said he came there to breed a riot. Mr. Hanson with great vehemence denied the charge, to the best of my recollection.

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What more did he say?—To the best of my recollection, sir, he addressed the weavers and said, “he looked upon them to be a distressed people, whose claims he believed to be just; he had not a doubt but there would be something done for them, he exhorted them to conduct themselves peaceably and quietly, and as long as that was the case he (Mr. Hanson) was the weaver’s friend.”

Did you hear him say any thing about their going home?—I believe he exhorted them to go home peaceably and quietly.

Did you hear Mr. Hanson say any thing about three thousand pounds, about Nadin or his faction, that there was room for six shillings in the cut, and if they could not obtain that, he would advance them six shillings in the pound?—No, sir, I did not.

What was Mr. Hanson’s general conduct, as far as you saw of it?—He conducted himself suavely.

What do you mean by suavely?—Quietly, indeed.

Mr. John Brierley sworn.—Examined by Mr. Raine.

Mr. Brierly, I understand you are an upholsterer residing in Manchester?—Yes.

Do you remember being in the lane near St. George’s-road on the afternoon of the 25th of May last?—I remember being in the field.

Do you remember Mr. Hanson being there?—I do.

Did you hear him address the people: if you did, will you be so good as to tell us accurately what you heard him say?—He was speaking at the time when I arrived; he was saying, “Gentlemen, I respect you: I have a right to do so,”—and mentioned something of his father having accumulated a property by the endeavours of the weavers; he next said, or the next I could understand, for the people who surrounded him were moving from place to place, he said, “he was sorry they had lost their bill; but, for God’s sake, let not that precipitate you to any acts of violence;” after that I had got into the rear of the crowd and was not able to ascertain any thing exactly as to what he particularly said, but I heard him frequently say, I am sure, “for God’s sake be peaceable.”

Did you hear him say any thing about their going home?—I do recollect him saying something as to their dispersing. I do believe he said so.

After he had finished this address, did any of them disperse?—After he went down the lane, I saw several go off the way he did; he turned down the road, and a number of them came down the field.

Did you hear him say any thing of this kind, that “he would support them with three thousand pounds, not to mind Nadin or his faction; that there was room for six shillings in the cut, or if they could not obtain that, he would advance six shillings in the pound”?—I did not.

As it appeared to you, what was the conduct of Mr. Hanson on this occasion?—My opinion was that every thing he acted was for the peace and tranquillity of the people, and he wished them to disperse from the spot.

Alexander Patterson sworn.

Mr. Patterson, you keep the Bridgewater Arms, in Manchester?—Yes.

[Mr. Patterson was called to prove that Bigger had said to him that Mr. Hanson did not do any thing to promote riot; but it having been admitted in Bigger’s evidence \* that he might have said so, Patterson was not further examined.]

#### REPLY.

Mr. Sergeant Cockell.—Gentlemen of the Jury; although this case has occupied a very considerable portion of your time, and although my learned friend has produced a great many witnesses on behalf of his client, it appears to me that at this moment the case substantiated against the defendant is as clear as the sun; and, if I do not very much mistake, I shall show you that the testimony which has been delivered by the several witnesses who have been adduced on behalf of Mr. Hanson, instead of tending even in the least degree to prove his innocence, shows manifestly his guilt; and that he is an artful and designing man who, having found himself detected in one character, was, by the assumption of another, attempting to screen himself from observation.

Gentlemen, it has been stated that Mr. Hanson is one of the most amiable men in the world, that his character is that of the benevolent kind Christian, who pities and alleviates the distresses of his fellow-creatures; nay, that he is one of the most loyal subjects in the country, and that if the time arrives when his assistance shall be required, you will see this daring, valiant man advancing at the head of his majesty’s troops to vanquish the foes of his country. If Mr. Hanson ever held these sentiments, I am sorry he has abandoned them. I am sorry my learned friend referred to acts of former times. If Mr. Hanson has performed any services to his country heretofore, he has certainly by his present misconduct consigned them to oblivion.

My friend passed an high eulogium on Mr. Hanson’s father, who, I dare say, might well deserve it. I lament that such a father has had so degenerate a son, and that that son has forgotten his former virtues, and has become so disaffected and dangerous a subject to his country. It has been said that Mr. Hanson has not been well treated, that he deserved a better fate; but, if government had suffered Mr. Hanson to escape without inquiry, it might be charged upon them that they were only sipping out poor individuals for punishment, while they permitted a great and daring

\* Vide p. 27.

offender to violate the laws of his country with impunity. This prosecution of Mr. Hanson, in its effects, will be worth ten thousand such, of men of a lower order. If Mr. Hanson at any time deserved the eulogia my learned friend gave him, I must take it, that some disappointment has rankled in Mr. Hanson's heart; and that whatever his affection at one time was towards government, when he fell from his proud eminence, his mind changed with his situation, and that though once his country's determined friend, he has now become its determined foe.

Let us now see what has been charged against Mr. Hanson. That a number of the weavers had unfortunately conspired in times of distress and misery in order to raise their wages; that they assembled, as we have heard, to the amount of ten thousand, and determined to have their demands complied with, or to remain on the place where they were then met, and be shot to death. It is said, that Mr. Hanson endeavoured to quell the mob; that he endeavoured to disperse them; that he came from his home with that laudable view and purpose—a friend to his king and country—a foe to misrule and riot—and that he conscientiously set out with a view to quell the disturbance, to assist in dispersing the people, and to tell them it was best to defer their deliberations to a future period. The evidence of one of the witnesses who gave a confused, almost unintelligible testimony, was to this effect, “that he saw this man, before he went up to Mr. Trafford, address the people; that he told them to go home, to be quiet and peaceable, for there was nothing to be done by their staying there.” Now if any thing of this sort had occurred, if he had ever done any thing like this, would he not have selected, out of ten thousand men, one single weaver, to tell you that such had been Mr. Hanson's conduct towards them; that he told them to be peaceable, to be quiet, and to wait the issue of the parliamentary proceedings? and yet he has not called before you one individual man of that description. How can you account for it? Why, to be sure, if he had put into the box one of those people to prove that to have been Mr. Hanson's conduct, the whole of this dark matter would have been illuminated, the whole plan would have been developed, and we should be made acquainted with Mr. Hanson's conduct in the field and out of it. How happens it that he has called before you so many witnesses, one man from Derbyshire, and yet has not called one individual weaver, to discredit the testimony of those witnesses who saw the whole of this affair?

I will not at this late hour minutely detail the contradictions in the evidence on the part of the defendant, but will only advert to them. What is the evidence of Mr. Satterthwaite?—a gentleman of whom I know much, to whose family I am much indebted, and all of whose family I dearly love. I select him because I

know him well. He comes on the ground in the middle of the affair, and he sees Mr. Hanson put on an air of gallantry; much was to be done with the ladies, and “he hoped they would use their influence with the people to induce them to go home.” Now, I have no doubt that all Mr. Satterthwaite related did really pass, but what becomes of all the fine speeches about the king and the country? I cast them from me; they are quite inconsistent with any thing we find in the conduct of Mr. Hanson. It is an old saying, got by heart, and running in the same words exactly: “If you regard your king, if you regard your country, if you regard your families, for God's sake disperse. God bless you, lads, and God save the king.” But I am now speaking of what is said by the other witnesses. Well, then, there is the schoolmaster, and he says, “God bless the king, God bless you all.” This puts me in mind of a stanza which I have in my hand, and which proceeds in the same strain.

God bless the king, God bless our faith's defender,  
God save the king, and down with the pretender:  
But who pretender is, and who the king,  
God bless us all, that's quite another thing.

And I verily believe that if any thing was uttered by this man, similar to what has been related, it had no better meaning than the verses I have just read to you.

But I will tell you now what all this proves. Mr. Hanson came into the field with mischief and malice in his heart. I have no doubt he hoped on that day to have excited a riot, and then to take the consequences of whatever might ensue. That was his object—that was his view—he found himself disappointed—he found his tyrannical hopes blasted, and that he was not likely to be a distinguished character of that day. He found he was a marked man; he found that the officer who had the command of the cavalry had some knowledge of him and of what he was anxious to accomplish; he found that the magistrates were coming from every quarter, and he found he could do nothing that day; he saw he was a marked man, and that the military watched him; he meant mischief, he hoped to accomplish his purposes, but the diligence of the police of Manchester defeated his design. He then changed his style, went down the field and uttered those expressions you have heard, many of which teemed with mischief engendered by malice.

Well, then, gentlemen, is the testimony I have laid before you contradicted? supposing all to be true which you have heard advanced on the other side—and which I do not admit, because all the accounts differ, and as I shall show you, in many material points—but supposing them all to be true, there is no evidence which clashes with what I have laid before you, except the evidence of that schoolmaster. He tells you he saw this gentleman go towards the officer, and that he did not hear the conversation; that it was very odd he did

not; that he did hear a conversation between Mr. Trafford and Mr. Hanson; he did not see him bow, he never heard him shout, but he did see Mr. Hanson take off his hat. Well, what did he pull his hat off for? Why, he pulled his hat off, and he extended his arm, and held his hat on his arm, and did nothing at all. How ridiculous is this! it shows that no reliance is to be placed on any part of the story. So much for the schoolmaster.

Then Seddon is called, and that man's evidence must all be false, unless you disbelieve that most respectable gentleman Mr. Trafford and the soldiers; and I think you will pause before you do; I think you will give them credit; and if you do, this man must be wilfully perjured. Gentlemen, when I use this expression, I do not use it rashly. But at the place from whence we have lately come, I mean the York assizes, we had in three or four cases the most dreadful perjuries that were ever heard; ten or twelve witnesses swearing to facts of a directly contrary nature, and the jury were then reduced to the necessity of separating the truth from the falsehood, to look to probabilities, and determining on which side of the case the truth lay.

I must make one further observation. This prosecution being carried on under the direction of government, as one of the servants of his majesty I should think it wrong in me to pursue the case, if I did not think it was made out against the defendant; and if the case had not been made out satisfactorily, we would instantly have abandoned the prosecution. My learned friend has said that Mr. Hanson is injured by this prosecution; I do not think he is injured at all, for when we are prosecuting a subject of the country, we only look that justice is done, and care nothing about the issue; we only wish to bring the matter fully and fairly before the jury, and I should be ashamed of myself if I urged any circumstances against the defendant which were not warranted by the evidence. Mr. Hanson shall be dealt with fairly, as our duty requires us to deal with him.

If he be guilty, his crime is of the very worst description; for a man who fomented riot in such a town as Manchester, cannot foresee the consequences of what he does; he cannot imagine the mischief he may disperse around the country, and what dreadful disasters may ensue. When a mob has conspired against the good order of society, what shall be done? Is it not expedient then that the magistrates should look vigilantly around them? and if they find a man in the situation that Mr. Hanson sustains, lending them his assistance, is it not then incumbent on them to bring him to justice and give him an opportunity of vindicating his character? If he cannot do it, is it not fit he should be rendered up to offended justice?

Gentlemen, I have before observed that no weaver has been called before you on behalf of Mr. Hanson; a damning proof of that gen-

tleman's guilt. But it is said that he wished the magistrates should be the interferers in this business. How unfortunate a speech! If that had been Mr. Hanson's intention, when he saw the magistrates and peace-officers coming on the field, tell me why he did not join them and say "I have great influence over these men, they will listen to my advice, and I will lend you my assistance in dispersing them?" I am sure his offer would have been well received. What then do you think of all those fine speeches which have been recited to you on his behalf, but that they were only made with a view to get out of a scrape, from which he found it would be difficult to extricate himself? They did not proceed from his heart, but finding he could do no mischief, they were only made to enable him to get out of the difficulty as well as he could. See what some of these declarations are. "I have been ordered off the ground; I have much cause to complain; I am your friend; I am a weaver; I feel for your distresses." Although he was going to make a declaration of peace, yet at the very moment he is uttering those sentiments, his rashness will not let them be left unaccompanied with those circumstances which were likely to irritate them—"I am a weaver, and the wealth that I enjoy all came through the labour of the weavers: I look upon you as a distressed set of men, but you can do no good now, your attendance here cannot answer any purpose, I will do all I can for you, but your meeting is now abortive." Mr. Hanson saw the military were in force, and that there would be serious havoc and destruction; he found he was a marked man, and that he would be the first victim on that ground. I dare say he felt that he would be laid prostrate, because it was manifest that he was the person who exerted every effort to disturb the tranquillity of the country on that occasion. Mr. Hanson, finding he was a man upon whom the eyes of the magistracy were fixed, then runs away, and makes new speeches; and it is enough to see how the evidence given by the different witnesses differs from each other.

But, gentlemen, one witness (Mr. Carr) was unfortunately called by Mr. Hanson, and that gentleman disposed of all the circumstances they had chosen for the purpose of making a defence. He tells you that the speech he heard was before Mr. Hanson fell from his horse; all the other witnesses having said that what they heard was after the fall from the horse. It always happens that by some mischance or other, some little part of the case has not been properly attended to, so the evidence of Mr. Carr becomes a material testimony on the part of the prosecution, and disposes of the evidence of all the witnesses on the part of the defence. They would have you believe that poor Mr. Hanson never shouted, that he never waved his hat, and that he never spoke till after he had departed from his dapple grey. Gentlemen,

falsehood detects itself; and I make this observation, without going to particulars, that all their testimony went to this, that Mr. Hanson had never uttered anything seditious, and that he never opened his mouth till he made it known that "he was the man who loved his king and country, the weavers and their families, and, in short, that he was so fond of them all, that he begged they would all go away."

Having made this observation, I will now draw your attention to a most important point in this case, namely, that not one witness for the prosecution has been contradicted. Has the veracity of one witness whom I have called been impeached? They attempted to discredit Bigger, because he had said that in his judgment Mr. Hanson did nothing to promote a riot, but I say there was no imputation cast on the testimony of this witness. It is supposed Mr. Hanson came on the field for the purpose of talking about the bill; I can only say, if that was his purpose, there never was a time so ill adapted for it. When these men had assembled under circumstances of rioting, when they were disposed to die rather than depart from the place, so inflamed by every thing tending to make men mischievous and dangerous, was that the time to reason with them and to keep them on the field? The twenty-fourth had been a day of tumult and riot, but by the presence of the magistrates and the boroughreeve, they were dispersed at a late hour of night; at the same hour on the next morning they assemble again, Mr. Hanson then comes on the ground, and he finds out the commanding officer, Mr. Trafford.—I must pause to advert to an observation which my learned friend made, and which I was sorry he threw out in contempt and derision. He chuses to designate Mr. Trafford "that field marshal," but in my judgment and opinion, there never was a man who conducted himself with more wisdom, more ability, and discretion than Mr. Trafford. From his conduct on that occasion, I hope to see him an ornament to his profession, and a brave defender of his king and country against the foes of them both. What is the behaviour of this young gentleman? This man came on the ground, and said he wished to speak to the people; captain Trafford's reply was not that "I will not allow you," not that "you shall not," but he says "I beg you will not, your presence induces the people to press on the cavalry, your discourse will only increase their irritation, and I beg you will not speak to them." But, in the evidence on the part of Mr. Hanson, there is a very remarkable circumstance; some of the witnesses have sworn to expressions of this nature, "Why, Mr. Trafford, I know your family and you know mine, and I thought you knew me better than to suppose I should come here to breed a riot, on account of your family." Why, gentlemen, could this escape the lips of any man living? It is perfect nonsense: you will not

do Mr. Hanson so much injustice as to say he would make use of such foolish expressions as those; I mention it to show that the thing never passed, that it was all a fabrication.

To return to my own evidence. Mr. Trafford then says, "I beg you will not speak to the people." Nevertheless, he sees him harangue them repeatedly, and from the effects produced, he concluded he was irritating the people. He went up to him, and he addressed him thus, "Mr. Hanson, I shall be obliged to you if you would leave this place; you irritate the mob, leave it." There was a loud shout. Again Mr. Hanson went on to harangue them, and he then said, "I shall be obliged to you to leave the field immediately." Now, this was the friend of order, the man who came to prevent a riot, to quell a riot; why, if he had come with any such intentions, he would have said, "Good God! Mr. Trafford, I am come to assist you in dispersing these people." He then pretends he hopes he will not hurt them, and Mr. Trafford replies, "No: I hurt them? I am here but to act under the directions of the magistrates." That did not answer the purpose, and he then goes off to another part of the field. One of the witnesses called on the part of Mr. Hanson has told you, that there was really no necessity for calling in the magistrates, it was one of the most absurd things they could think of; the people were all standing still in their places, peaceably and quietly, all there in the manner of a quaker's meeting; or whether they were a curious species who thought they were to take root and grow there, I do not know; but he represented that these people, to the number of ten thousand, were so peaceable, so quiet, that the magistrates were very idle to appear there; but these are trifling observations.

Mr. Trafford's account is, that he saw Mr. Hanson come on the field, that he told him not to speak to the people, that he turned from him, that he did not speak to them, he huzzaed himself with his hat, and that he removed to another part of the ground; that he thought the mob seemed to become more unruly, and he saw clearly something or other had occurred, which made it necessary for him to interfere again; he did interfere in the most manly manner, and yet how does Mr. Hanson represent this to the people? Why, that he had been treated in an ungentlemanly manner, and that he had been ordered off the ground; and with a view to stir up their passions, he says, he had been instantly ordered off the ground, and that he could render them no service, on that account.

We will now take up the evidence of Wrighton. If ever a witness was put into that box who insured his credit as a soldier and as a subject, it was that same man. My learned friend says to him in his cross-examination, Wrighton, you have a good memory? Yes, said he, thank God. Well then, can you tell us what you heard said by that person (referring to me).



No he could not, and yet he was in court; he either did not attend to me, or he did not understand me. Did you hear what your officer said? Yes, he did. Well, now tell us what he said. So he began the story, my friend was thrown on his back, for he recited accurately the substance of what his officer said, and our notes were the very substance of what he repeated. He lent an ear to what his officer said, though he did not attend to me. The man began, my friend was shifted from his ground, and so the poor fellow went on till he had detailed accurately the substance of Mr. Trafford's evidence. But then he was interrogated as to the reasons of his attending to what passed in the field. The simplicity and the eloquence of that man were extraordinary; I will read you the answer in his own language. "As several of them cheered him, and said they had their colonel there as well as ours, I wished to see what sort of a colonel he was; he attracted my attention towards my king and country and myself, for I did not think that he was a good subject." Gentlemen, how eloquent it was in the mouth of such a man! "My attention was rivetted upon it, because I was firm in my country's cause, and I thought Mr. Hanson's language was not the language of a loyal subject and a good man, therefore I attended to it, and therefore I can state it with exactness." Has any thing been offered against this witness? You would have had the whole history of his life; any little defect that could be found in his character to hurt his testimony, would have been laid before you, but the fairness of his character was incapable of being tarnished, and his evidence remains therefore in its full force.

If then you can believe this man, the whole of the case is proved; and I will only take notice of the defendant's evidence. The several witnesses called on his behalf, were asked if they heard him say, "stick to your cause, and you will gain your ends." This was the most farcical proposition ever made. I say more ridiculous stuff never was put to witnesses, because it was not said at the period of time when any of their witnesses could have heard it, because it passed before they heard any thing of it; the negation, therefore, of all these circumstances proves nothing in the case, because they took the matter up at a subsequent period of time. It has been sworn that when one of the people asked Mr. Hanson, "if he saw the constables coming on the ground," he replied, "Never regard them, neither Nadin nor his faction shall put you off the field this day." And if you believe the witness, what has become of the boasted loyalty of the defendant? a man who sets the laws of the country at defiance, and, encouraged by the force of numbers, urges these men to oppose themselves in bodily strength against the constables? You have no reason whatever to disbelieve the testimony given by this man. My learned friend found himself extremely uneasy under the pressure of this evidence;

he found the pressure so great, the weight of the evidence so powerful, that it was in vain to attempt to withdraw it from the attention of the jury, and he was obliged to trust to the chapter of accidents, for he could not say one word on the subject himself; he could not set aside the evidence, for he had no witnesses to contradict it. It gives an important turn to the case, and goes immediately to show the intention of the defendant, and I defy any man of common sense to deny it.

On this indictment, the defendant has had notice of every thing we meant to prove against him; all the factious words which we have charged upon him are to be found in the copy of the indictment which he has had now many months before him, therefore he does not come into court unprepared; and if the colouring which my learned friend has endeavoured to give to the case had been at all applicable to it, out of ten thousand men in that field, he might have called five hundred who were witnesses to the whole transaction. In some cases men do not know what the charge is they have to answer; it is here specifically put down, and they have not called a single individual to disprove the testimony of any one of the witnesses I have produced; but they have examined a set of persons who, according to their own accounts, knew nothing of the beginning of the transaction.

When this man was accused, why did he not go to the magistrates? He knew he was complained of, why did he not appear and endeavour to explain his conduct? He never came forth and said "you have misconceived me and my design; I am an innocent man." This he could not do; but he waited the attack in the shape of an indictment. If he had been the loyal subject described, he could not have existed an hour under so abominable an imputation. I have only another observation, namely, that the evidence which has been adduced on the part of the defendant, relates to a period of time after all the acts of criminality had been committed, and, whether it be true or false, it does not signify one farthing, for there is not one tittle of evidence to disprove the charge on which the indictment stands.

Gentlemen, I have done my duty, and a painful one it has been; but it is a duty which has been imposed upon me, and I felt myself bound to discharge it. If Mr. Hanson could have manifested his innocence, I should have been the first man to have rejoiced at it. But when you are satisfied that nothing remains unproved that is charged against him, and that the evidence on the part of the prosecution stands entire with regard to the credit of the witnesses, nothing remains but for you to discharge your duty. When we see a man standing in the condition that Mr. Hanson is now in, we cannot but lament the situation of the unfortunate being; but, nevertheless, our humanity must not interrupt the course of justice, and whether the criminal be in a high situation of life, or whether he be in a humble one; the

laws of England, as it has been well said, are like the sun, "they shine alike on rich and poor." Mr. Hanson, from his rank in life, ought to have known better than to have plunged himself into this transaction. Most serious mischief might have been the result of his interference, and if mischief had followed, Mr. Hanson must have considered himself the author of it. The present is a case of peculiar importance in this great county; and if men of power come forward and lend their support for the purpose of fomenting riot, they ought to be the first to suffer.

Gentlemen, I think I have made out the case, and I do not now retract the expressions I used at the onset. I am unknown to Mr. Hanson, and he is unknown to me; I have no motive in what I have offered to you but to discharge my duty between the king and the defendant. Feeling, as I do, that the case on the part of the prosecution suffers no imputation from the evidence that Mr. Hanson has adduced, I sit down with perfect confidence, and in the most ardent expectation of receiving your verdict that Mr. Hanson is guilty of the charge.

#### SUMMING-UP.

Mr. Justice Le Blanc;—Gentlemen of the Jury;—This is an indictment against Mr. Joseph Hanson, charging him with a misdemeanor. The indictment states, that certain evil-disposed persons having assembled in a riotous and tumultuous manner, in great numbers, for the purpose of compelling their masters to advance their wages, the defendant, Mr. Hanson, did unlawfully and wickedly encourage them in that conspiracy, riot, and tumultuous meeting, which they had been guilty of, by using certain expressions to them, encouraging them to proceed in that illegal manner, and in prosecution of the unlawful purpose stated in the indictment.

This, Gentlemen, is the nature of the charge: it is undoubtedly a most serious charge, because if the defendant attended for the purpose of assisting these rioters, there can be no doubt that he is highly culpable, and it will be for you to consider, upon comparing the evidence which has been delivered, whether you are convinced that that charge has been brought home to him.

That a very great number of persons did assemble on the twenty-fourth and twenty-fifth of May, there can be no doubt; and that they were so collected together for the purpose of procuring an advance of wages, which they said at that time were not sufficient, is equally indisputable. It is also clearly proved in evidence, that the situation in which they were on the twenty-fourth and twenty-fifth of May, was considered by the magistrates at that time at Manchester to be so serious as to call for their interposition, and that they had consequently attended on the twenty-fourth and again on the twenty-fifth, the twenty-fifth being the day upon which Mr. Hanson is charged with having conducted himself in the manner

stated in the indictment. The question then for your consideration will be, whether he did so encourage them or not—whether he was then persuading them to disperse, or was encouraging them to persevere in their illegal conduct.

For the purpose of making the evidence more intelligible, I will state to you one or two of the circumstances which the evidence displays. One of them is, that shortly before the period in question, there had been a bill before parliament for the purpose of fixing the wages of the weavers, and reducing them to a regular system; that that had not been thought a proper and a right bill, and that parliament had therefore rejected it. It is further stated, that an account of the rejection of that bill had been received at Manchester the day before this concourse of people had assembled; and it appears likewise, that this gentleman, Mr. Hanson, had professed himself to be favourable to that bill, and had promised to support it in parliament if elected a member. These circumstances will come more fully before you when I shall state to you the account which is given by Mr. Starkie of Manchester, who describes the nature of the bill.

[Here his lordship recapitulated the evidence on the part of the prosecution.]

This is the evidence on the part of the prosecution; most assuredly some of these seem to be very strong expressions addressed to several thousand men, assembled for the purpose of procuring an advance of their wages; and under these circumstances, that Mr. Hanson as a friend should advise them, as the witnesses state, to stick close to their purpose and they would carry it, does appear to be holding out to them an encouragement to persist in that improper conduct by which they were then endeavouring to carry their intentions into effect. You will, when you come to compare the evidence, consider whether the statement given by the witnesses who have been examined on the part of Mr. Hanson be, in your estimation, sufficient to overturn the testimony given on the part of the prosecution, and which is adduced for the purpose of shewing that Mr. Hanson was then not suppressing, but aiding and assisting in the riot.

In determining this it will be for you to consider what credit you will give to the witnesses who have spoken to the expressions which Mr. Hanson is said to have used on the occasion. One of the witnesses tells you, that Mr. Hanson "bid them not regard Nadin or his faction, for they should not put them off the field." If you should be satisfied that these expressions were used by the defendant, and that they were so used for the purpose of encouraging them to riot, this will certainly go far towards establishing his guilt. On the other hand, many witnesses have been examined on the part of the defendant who state, in the first place, that these expressions which have been sworn to by the several witnesses for the prose-

cution were never heard by them, for that on the contrary he was endeavouring to ingratiate himself with them and to persuade them to go home, and did not encourage them to continue there for the purpose of a riot. It is said that what Mr. Hanson had in view was to talk about their bill, which bill, as you have heard already, was for fixing the wages to a certain sum, below which they should not sink: and it is contended, that the words "stick to your cause," if used at all, must have had reference to this bill; but they deny that any such expressions were used, and have called witnesses to prove that the words spoken by Mr. Hanson were of a very different kind, and calculated to prevail on the mob to disperse and go quietly home. These witnesses speak to the words which he spoke during the time they were present and within hearing, and therefore it will be for you to say, whether you are satisfied that any of these people were in hearing during the whole time, so as to be able to say that no such expressions were used as those mentioned by the witnesses for the prosecution.

[His lordship here recapitulated the evidence on the part of the defendant.]

Gentlemen, this is the evidence which is given for the defendant. Now with respect to the words which these witnesses say were used by Mr. Hanson, apparently tending to make the mob disperse, it will be a question for your consideration, whether these being the last words he used might have been produced by fear, supposing Mr. Hanson to have been afraid that he had gone too far at first, and to have been desirous of qualifying his former words. The expressions sworn to by some of these witnesses certainly differ, but the greater part of them are to the same effect. They all swear they never heard him make use of any of the words charged in the indictment, so that you will have to compare with this the evidence which has been given on the part of the prosecution, and to determine whether this evidence so fully contradicts it as to satisfy you that the account given by the witnesses for the Crown is not true. If the expressions which have been stated by the corporal (and he is confirmed by Mr. Trafford as to the effect produced on the mob, though he would not speak to the precise words) were used, it will be difficult for you to put a favourable construction on them. On the other hand, if those witnesses who have been called by Mr. Hanson saw and heard the whole of the transaction, and were near enough to see and hear every thing which passed, the account given by the witnesses for the prosecution must be totally false. According to the evidence of most of the witnesses, it seems pretty clear, that he did not address the people the whole time from the same spot; but on the contrary, that he was moving about the field: and hence it is a difficult matter to conceive how any two people should be so near during the

whole of the time as to be able to undertake to swear that they could hear every thing he said. Supposing this however to be the case, and that this evidence is sufficient to satisfy your minds, that those words which are imputed to Mr. Hanson were not uttered, then of course the prosecution falls to the ground, as there would not remain any expression or conduct imputable as criminal to the defendant. But if you are of opinion that he did make use of these expressions, that he did use these gestures, cheer them by huzzas, and wave his hat to them, and so encourage them to continue in the state in which they then were, you will be at a loss to account for all this, without imputing to him the criminal intention which is laid to his charge.

Mr. Trafford, indeed, has not repeated any of the expressions, except the conversation which passed between them; but there are other witnesses who say they were present, and positively heard him use the words with which he is charged in the indictment. Mr. Trafford says no more than this, that Mr. Hanson asked him "if he would give him leave to address the people," and that he said "no; I will be obliged to you to go off the field," and that this was all that passed; but according to the account he gives he had never charged him with coming there to breed a riot. The witnesses for the defendant swear that Mr. Hanson said to captain Trafford, "how could you think I came here for the purpose of breeding a riot? you know Mr. Trafford I know your family, and you know mine, and you could not suppose I should do that, for the sake of your family." Mr. Trafford only swears to seeing him in the attitude of speaking.

The other words rest chiefly on the testimony of the two corporals, and the last witness for the prosecution acknowledged that he believed he had, on one occasion, in conversation with two gentlemen, expressed his opinion that Mr. Hanson had not done any thing to induce the people to continue in a state of riot. You must compare the evidence, and upon taking the whole into consideration, say whether you are satisfied that Mr. Hanson addressed the people for the purpose of encouraging them to continue in that state of tumult. If you are, the charge is made out, and you must find him guilty. If on the contrary, you think the expressions he uttered were not of that nature, and that he did not use any with the intention to encourage them in rioting, and if you think you can fairly ascribe the words to another motive, you will acquit him.

One observation I cannot but make. If a gentleman of his rank wanted to do all he could to abate the tumult, we must be surprised that he seems never to have joined with the magistrates in concerting proper measures for that end. These observations are made for your consideration, and you will find Mr. Hanson either guilty, or not guilty, as you are

satisfied his conduct was intended to encourage or to allay the disturbance.

The jury returned a verdict of GUILTY.

### COURT OF KING'S BENCH.

*Westminster, May 3rd, 1809.*

*The King against JOSEPH HANSON, Esq.*

Mr. Hanson appeared in court, and Mr. Justice Le Blanc, read his notes of the trial.

*Mr. Attorney General.*—[Sir Vicary Gibbs, afterwards Lord Chief Justice of the Court of Common Pleas.]—I humbly move your lordships for the judgment of the Court against Mr. Hanson.

*Mr. Garrow.*—My lords; if it is not improper, I would, as Counsel for Mr. Hanson, take the liberty of asking, not for the purpose of finding fault in the smallest degree with any thing which his lordship ruled at the trial, but for a very different purpose, which I shall state by and by, whether his lordship finds on his notes, that any evidence on the part of the defendant was rejected?

*Mr. Justice Le Blanc.*—I remember perfectly well, that on the part of the defendant evidence was offered of the declarations of Mr. Hanson in the company of several of his friends while at home, and before he attended the meeting, declaring what he intended to do. I was of opinion that that could not be received, but only evidence of what he said at the time. I was of opinion, that what he had previously said, could not be considered as evidence. It was certainly tendered, and I rejected it.\*

*Mr. Garrow.*—I did not desire to have it stated, in order to found any complaint of what passed at *nisi prius*: I merely wish the Court to be apprized of it with a view to an observation which I shall by and by make.

The following Affidavits were put in and read.

#### IN THE KING'S BENCH.

*Francis Dukinfield Astley*, of Dukinfield, in the county of Chester, esquire, maketh oath and saith that he hath known the above-named defendant, Joseph Hanson, during the last five years or thereabouts, and that since the beginning of the year one thousand eight hundred and four, he hath been the more particularly acquainted with him, because at that period this deponent raised a corps of volunteers called the Dukinfield Rifle Corps, of which, when they were exercised alone, this deponent had, and still has the command, as captain commandant, but which were attached to the Manchester volunteer rifle

regiment, under the command of the above-named defendant, as lieutenant colonel commandant. Says that from his intimacy with the said defendant, he is fully convinced, that the said defendant is in all respects a well disposed man, of steady and unshaken loyalty to his sovereign, zealously attached to the constitution of this country, and a firm friend to public peace, and good order of society.

*William Nabb*, of Manchester, in the county of Lancaster, gentleman, and *Joseph Kirkshaw*, of the same place, gentleman, severally make oath and say, that they, these deponents, have known the above-named defendant for eight years past and upwards, and for the most part of the time have lived in habits of intimacy with him. That the said Joseph Hanson hath always conducted himself as a good and loyal subject to his sovereign, a firm friend to the constitution and government of this country, and believe him to be averse to any tumult, riot, or disorder among the people. And these deponents severally say, they believe the said Joseph Hanson incapable of doing any thing which might tend to the promotion of riot or the disturbance of the public peace; and these deponents further say, that on Wednesday the twenty-fifth day of May last, these deponents saw the said defendant, when he expressed to these deponents his extreme regret that the weavers had assembled; and that he would endeavour to prevail upon them to disperse quietly, for that he thought it his duty as a townsman to prevent them as far as he could from committing any act of riot or any breach of the public peace.

*Thomas Appleby*, of Salford, near Manchester, in the county of Lancaster, merchant, and *William Shaw*, of Manchester: aforesaid, gentleman, severally make oath that they have known the defendant Joseph Hanson for eight years, and upwards, and for the most part of the time have lived in habits of intimacy with him. That the said Joseph Hanson hath always conducted himself as a good and loyal subject to his sovereign, a firm friend to the constitution and government of this country, and deponents verily believe him to be wholly averse to any tumult, riot, or disorder among the people. That they believe defendant incapable of doing any thing which might tend to the promotion of riot, or the disturbance of the public peace. That on the twenty-fifth day of May last deponents saw the defendant, when he expressed to deponents his extreme regret that the weavers had assembled, and that he would endeavour to prevail upon them

\* Vide *ant* p. 43.

to disperse quietly, for that he thought it his duty as a townsman to prevent them, as far as he could, from committing any act of riot, or any breach of the public peace.

*John Whitehead*, of Manchester, in the county of Lancaster, calico printer; *Edward Rushton*, of Manchester aforesaid, wine merchant; *John Wood*, of Manchester aforesaid, merchant; *James Wood*, of Manchester aforesaid, merchant; *Gavin Hamilton*, of Manchester, aforesaid, surgeon; *Thomas Millington*, of Manchester aforesaid, merchant; *William Cowdroy*, of Manchester aforesaid, printer, and *Richard Hancock*, of Manchester aforesaid, cotton dealer, severally make oath and say, that all these deponents have been intimately acquainted with the above-named defendant, *Joseph Hanson*, for several years last past, and have associated with him frequently at his table; and each of these deponents for himself severally saith, that he never heard the said defendant utter any expression or sentiment unbecoming a good subject, and a friend to peace and good order; and all these deponents severally say, that they verily believe that the said deponent is very averse to any tumult, riot, or disorder among the people, and would not in any degree excite or encourage the same. And these deponents, *Gavin Hamilton*, and *Thomas Millington*, for themselves severally say, that during the period of the assembly of the weavers at Saint George's-fields mentioned in the indictment, and before the said defendant went thither, they these deponents heard the said defendant disapprove very much of the conduct of the weavers in so assembling together in the manner they did.

*Mr. Garrow*.—My lords, it is now my duty to address to your lordships some observations on the case of the gentleman who stands before you to receive the judgment of the Court. It is impossible for those, who have become acquainted with the great body of evidence which has been just read to the Court by the learned judge who tried the cause, not to have felt it their duty to take into their most serious consideration, whether it might not be fit that this evidence should be submitted to reconsideration, in the hope and expectation that it might lead to a different result. It is impossible to read the great body of evidence which was offered on the part of the defendant, not only negativing all the offensive and mischievous expressions attributed to him on the part of the prosecution, but ascribing to him with one voice a continued course of the best possible demeanor in the circumstances in which he and his neighbours were placed, without thinking it might be fit to apply to the discretion of the Court to give him an opportunity of having this case tried

by another jury. But when I had an opportunity of consulting with my coadjutors, who are also of counsel for the defendant, and to whom his interests were committed on the day of trial: and when I learned from them that the case had been left most faithfully and candidly to the consideration of the jury, without any attempt on the part of the learned person presiding to urge any thing against the defendant: when I considered that the case had been so left to the jury, and that it was their peculiar province to decide on his motives and on the facts, I, in common with the other counsel of *Mr. Hanson*, thought it was not fit to trouble the Court with any such mention. I did not presume to ask of the learned judge the question which I put to him, with a view to find any fault, or to complain that the evidence was improperly rejected; but with a very different view. It was for the purpose of satisfying the Court that it is not on the pressure of the occasion—that it is not now, when he feels that he is called upon to receive the sentence of this Court—that he is assuming a demeanor for the day of judgment. He wished, if the rules of law had permitted, to exhibit in the country, where he is charged with having committed the offence, a picture of his mind at the instant that he proceeded from his own house and from the company of his respectable friends, and that it might be known by his country. The rules of law did not permit the learned judge to receive that evidence; but, my lords, I am sure you will not suspect that it would have been offered if the defendant had not been prepared to produce it, and if there had not been, when the learned judge did reject it, other evidence as to the transaction to which it was meant to be applied, that had exactly the same tendency and aspect.

My lords, if *Mr. Hanson* had never had any intercourse with Manchester, and if the weavers of Manchester had for the first time been assembled in great numbers; if they had been on a sudden assembled with a view to increase the price of their labour, or for any other purpose which they were to effect by numbers and tumult, it would be extremely difficult to find any excuse for him, or to explain why a gentleman in his situation has been found to have done and to have said, what he is stated to have done and said. But it must be apparent—it cannot fail to be apparent—on the evidence, that *Mr. Hanson* had been a petitioner to the legislature for the relief of those persons whose interests he most sincerely wished to promote; and many of the expressions used on his part are most clearly and unequivocally, and distinctly referable to that, and to that alone: and it will not fail to be observed by the Court, that expressions of that nature which are heard by persons whose minds are pre-occupied by the surrounding circumstances, pre-occupied by alarm—who do not know the text on which that was the comment—who cannot in their own minds

refer it to that cause—naturally concludes the thing refers to the then existing circumstances, and to them alone.

Now may I be permitted to advert to the evidence that has led to the conviction of Mr. Hanson? The persons who gave that evidence were assembled with a full impression of the necessity of great danger; that the neighbourhood of Manchester was in the most imminent hazard. And, my lords, it would have been a foolish affectation of more courage than belongs to any man, to say it was not a well-grounded apprehension. At that time, they see a gentleman coming into that place who is stated to have had, as he had, considerable influence; and they hear him use expressions, and—not having any knowledge as to past circumstances in which he had acted legally—they naturally consider these expressions as used by him for the purpose of exciting the present mischief. Now, my lords, as to the expressions themselves;—I am not now questioning the verdict, I am precluded from doing that, I must acquiesce in the verdict, I am not asking you to set it aside, I am only asking you to look at all the circumstances of this case, and to see whether it is not extremely probable there has been some misunderstanding;—Mr. Hanson presents himself to these persons. He had before been their friend. They, in common with others, it cannot be doubted, had been suffering considerable distress. He (believing that he had some influence over them, relying on their gratitude for his friendship) thinks he shall probably be able to tranquillize their minds and prevail upon them to retire quietly and peaceably to their homes. And nobody can doubt that very often such a man addressing such an assembly can do a great deal more than any military restraint. There is no charge, however, more delicate; and I wish to God it had occurred to Mr. Hanson to call on the magistrates and the military officers distinctly to attend to every syllable he had uttered on that occasion. When is it, however, that we see the propriety of this? We see it after this cause has been tried. We see it after all the evidence has been heard. We see it after some experience of the result of that meeting. But it is not to be expected that a person leaving his home with a consciousness that he is going to do good, and who has no mischief in his heart, should secure himself by having witnesses to attend to his actions and to his words. With this honest purpose he speaks to a large assembly, where he is ill heard, where he is not well understood, and where he is subject even to misrepresentation. He is heard by an audience whose minds are pre-occupied by alarm, and therefore naturally led to assemble every thing which they see and hear to that which has already filled their minds.

Now let us see what Mr. Hanson says. He is the most extraordinary man that ever lived, if he went there for the purpose of a riot, or

to increase and promote a riot already begun. He is a man of very considerable property, and he is not an idiot. And, my lords, there is not any man of considerable property who may excite and encourage a meeting against others, but must be sensible that he does not know how soon the same engine may be turned against himself. No man can hope that because he raised the storm, he can ride through it, and direct it. If his purpose was to make the weavers act in a tumultuous manner, and to continue them together to awe the magistrates, he seems to have gone to work in a most extraordinary manner. He speaks on the subject of the bill that had been lost, he laments it, he is sorry for it. Was this for the purpose of encouraging them in mischief? He tells them (and it is even stated in the evidence on the part of the prosecution, that he so advised them) to go home. Tumult therefore was not his object. He said if they would go home he would give them every possible assistance, that he had been their friend, that he was bound to them by every tie, and that all the comforts which he enjoyed were derived to him from the weavers, that he was born a weaver, and that he was the weaver's friend. Then he said, "I will support you to the extent of 3,000*l*. But then you are to return to your homes. I have been your friend, and I will do every thing for your accommodation." Did he offer them this money for the purposes of mischief? No! Nothing like it. Go home and take the subject into your consideration when you are peaceable and quiet, and when your minds are cool. Apply then to the legislature of your country for the redress of your grievances, and I will further your endeavours by every means in my power. This is what he addresses to them. And I am sure it will not be said on the part of the prosecution that this was all colour and appearance. He could not be simple enough to imagine that he might be exciting mischief and disorder, and to expect that this might pass with impunity. His house might not be the first that was pulled down, but no man who has any experience of popular tumults could say it would be the last.

My lords, these are some of the observations, that occur to me on the evidence. The verdict has passed, and I am not at liberty even to present Mr. Hanson's own affidavit to show that he had no criminal motive. I cannot do it.

I have very little more to say. The Court is incapable of pronouncing any capricious or unjust judgment, and if any body thinks or represents the contrary they do the Court great injustice. You pronounce discretionary judgments. Different cases vary in their degrees of guilt, the punishment also must be various, and suited to the degree of criminality in each particular case: and Mr. Hanson knows it will be founded on the precedents of the wisdom of your ancestors, and that you

will pronounce judgment upon him according as the quality of the offence before you requires. He knows he is not subject to any arbitrary, capricious or unjust judgment, and therefore he does not desire me to tire your lordships with any further topics.

*Mr. Raine.*—I shall trouble your lordships but shortly on the same side with my friend, *Mr. Garrow.*

My lords, I venture to indulge a sanguine hope, that the affidavits which have been read on the part of this gentleman, do exhibit his case to the Court in a more favourable view than I was enabled—than indeed I was permitted—to present it to the Court and jury at the time of the trial.

My lords, the learned judge before whom this cause was tried, has stated with great accuracy, how certain evidence was humbly offered by me at the trial, and that he felt himself bound to reject it. I say this, my lords, not at all for the purpose of complaining of the rejection of that evidence. I hope I discharged, as well as I was enabled to do, my duty on that subject. I do not attribute to myself any unbecoming obstinacy. The moment I collected the judgment of the learned judge, on the point of law, from that instant I bowed to such judgment. But the tendency of the evidence was most obvious, I mean so far as it manifested the intention of the defendant, as applicable to the record, and I think I am not too sanguine in conceiving, that if the evidence could, consistently with the rules of law, have been received, I might have reasonably expected a different verdict. If the good intention of the defendant—the manifestation of a purpose in his mind not to promote but to prevent a riot—had been satisfactorily laid before the jury, that of itself must have been sufficient. I trust, indeed I know, your lordships attention has been directed to that part of the evidence on the part of the prosecution, where it is said that he earnestly advised these people, so assembled, not to disturb the tranquillity of the country. You see he had this intention in his mind before he went into the field. It is confirmed by the record itself; but what is still more, it is confirmed by the evidence of the constable *Dickenson*, who distinctly proves that *Mr. Hanson* advised these people not to disturb the tranquillity of the country. These things taken together (if they could have been taken together by the jury) might have led to a far different result. Be that as it may, I am not permitted to urge it here in the way I was permitted before the jury, namely, by directly opposing the propriety of the verdict that has been given. But, my lords, the affidavits now before the Court manifestly show what the intention of the defendant was before he went into the scene of action. Since these affidavits exhibit to the Court such an intention on the part of the defendant, even although the evidence could not prevail on the jury, these affi-

davits will operate most forcibly upon the Court, in mitigation of punishment.

My lords, it was argued at the trial that the latter expressions of *Mr. Hanson* appearing on the record might be colourable. Perhaps I have no right to complain of the use that was made of that statement; but I think I may be permitted now to say, that what *Mr. Hanson* stated at his own house, immediately before he went to the field, in confidential intercourse with his own friends, cannot be suspected of being colourable.

[Here the learned counsel referred to the affidavits of the different gentlemen, as they stood in the order of time, to prove what his intentions were before he went to this meeting.]

We wanted to accumulate all the evidence we could, that was indicative of his intention, from the confidential conversation he had with those with whom he had lived in habits of friendship for a long period of time. However, it was urged at the time of the trial, that what *Mr. Hanson* did was colourable. It cannot be believed for a moment that the declarations he made in the presence of his intimate friends, with whom he had lived for almost the whole of his life—it cannot be for a moment suspected, that what he said to them, as indicative of his real intention—was colourable.

My lords, *Mr. Hanson* makes no affidavit in vindication of himself. However anxious *Mr. Hanson* may naturally be, and most unquestionably is, to exculpate himself completely in the opinion of this court and before his country, the moment he learned from his counsel that he could not possibly, consistently with the rules of this Court, introduce such an affidavit, he acquiesced with a becoming dignity of mind. He knew it to be infinitely more important to the public that the general rules of law should be complied with, than that they should be made to bend at discretion to the personal convenience, or to the particular cases of private individuals.

My lords, *Mr. Hanson* made no affidavit of another description, I mean of that supplicating nature, which we frequently, too frequently, see from the occasion, and which the Court are almost constantly under the painful necessity of considering as mere cant, and as arising from the apprehensions and fears of the moment.

*Mr. Hanson* thought it would be unbecoming in him to appear before you to deprecate that anger which he knows the Court is incapable of feeling towards him or any other individual.

*Mr. Hanson* presents himself before your lordships, and will bow implicitly to the sentence to be pronounced by this high tribunal, before whom he now presents himself. He thinks this more consistent with his honour and character, and at the same time more respectful to the Court, and more suitable to

his situation, standing here to receive the judgment of the Court, for an offence of which he had the misfortune to hear a jury of his country find him guilty.

*Mr. Littledale.*—My lords, I also am counsel for Mr. Hanson, and I shall only trouble the Court with one observation. You see, by the evidence adduced on the part of the prosecution, that Mr. Hanson requested permission from the commanding officer of the military to address the weavers in order to induce them to disperse. If he had intended to promote a riot among those journeymen weavers, in standing out for an increase of wages, it is quite impossible that he would have asked the military officer for leave to address them.

*Mr. Williams* and *Mr. Courtenay* briefly stated that they coincided with what had been urged on behalf of Mr. Hanson.

*Mr. Attorney-General.*—My lords, on this occasion I have on the part of the prosecution almost as little to address to your lordships as my learned friends who have preceded me, had in mitigation of the offence for which you are to pronounce judgment on Mr. Hanson, and nearly for the same reasons,—because my learned friends had submitted to the Court every thing they could suggest in mitigation of Mr. Hanson's offence. Your lordships have heard them; and they thought it unnecessary to trouble you at any great length. You have heard the learned judge's report. You have heard what was proved against Mr. Hanson at the trial. You have heard the verdict of the jury. And this renders it almost superfluous for me to add another word on the subject.

But few things fell from my friends, which call for my observations. It was very truly said by my learned friend, Mr. Garrow, that a man who possesses some property, is not likely to join with or excite a mob to acts of tumult. I do not go so far as my learned friend, who says the thing is incredible. I agree with him that it is most unwise. I agree with him, that those who put such a machine in motion, have never been known to be able to keep it under their own government; and though they may flatter themselves, that when they put it in motion, they can afterwards give a direction to it, they are always deceived in that expectation. Mr. Hanson would have been wise had he suffered these reflections to prevent him from pursuing the conduct which he has pursued, but his conduct is not incredible; I am afraid, the history of this country furnishes many instances of persons who may have flattered themselves, as Mr. Hanson has done, into the same acts of folly and intemperance which he has committed.

Your lordships were first told by my learned friend, that it was a subject of consultation between him and his learned coadjutors, whether an application should have been

made in this case for a new trial. But on the evidence as detailed by your lordship, there was not any fair ground for such a motion.

It was conceived on the other side that the jury had come to a false conclusion.

If that be the case, it would not be too late for your lordships now to grant a new trial, although since the conviction of this gentleman, there have been great opportunities of considering this subject; yet, though he is now brought up to receive the judgment of the Court, if they are satisfied that injustice has been done him by the verdict of conviction, it is not now too late to send the case to another trial, in order that that mistake may be rectified, and the injustice obviated. But, my lords, is it possible for any one who has heard the whole of this evidence read, and who has attended to it, to say that the jury have arrived at a false conclusion? I cannot say so. A person coming into court, after his lordship had read part of the evidence, and who either was not in court, or was occupied with other concerns while the other part of it was read, might have asked, how could the jury have arrived at such a conclusion? But those who have attentively considered the whole of it, must wonder any doubt should be entertained.

*Mr. Hanson*, at different periods of this transaction, acts different parts, and you will observe that his mind is very differently impressed by the events that took place. He goes to the field where this meeting was, as a friend of those who had assembled, and his primary object being to advance that which they had in view, and to assist them in advancing it by means which he thought were safe, he was willing to expose them to as little danger, and to prevent them from using more force and creating a greater degree of intimidation in the neighbourhood than was necessary for effecting their purpose. But he held out to them that he would support them so far as was necessary for attaining their object; and for the attainment of that object he offered to place at their disposal, his credit and his purse.

Their object was, by the terror produced by their numbers, to oblige those against whom they conspired, to comply with their demands. The first thing was to keep them together till that object was attained. The persons whose duty it was to disperse them were manifestly the peace-officers. Now let us attend to the expressions that Mr. Hanson used when he first came upon the field. Your lordship, I think, read from the report that they were collected to the amount of between three and four thousand. I speak very much within compass. There were in fact nine or ten thousand. But taking them at three or four thousand.—

*Lord Ellenborough.*—Captain Trafford says, there were six or seven thousand.

*Mr. Attorney-general.*—They were collected in vast numbers, for the purpose of obliging



those from whom they received wages to raise them. His first object was, to keep them together till that end was accomplished and therefore we have this declaration of Mr. Hanson, that the peace-officers should not disperse them. "Neither Nadin nor any of his faction should put you off the field to day."

Lord Ellenborough.—Mr. Attorney-general, does more than one speak to this?

Mr. Attorney-General.—Yes, my lord, several.

Mr. Justice Le Blanc.—Wrighton only (who was a corporal) spoke to this, I think.

Mr. Attorney-General.—I know I heard these words distinctly set forth as proved when your lordship read your report. Wrighton was a corporal, he was the witness to these words, which are thus proved to have been spoken by the defendant. And with respect to his calling other witnesses to prove that they did not hear these words spoken, he might have called a thousand witnesses of that description. Was Wrighton discredited? I am informed by those who saw him, that a more credible and respectable man in his line of life could not have been produced. And as far as one is able to collect any thing from the manner in which he delivered his testimony, he appears to have shown little disposition to press the case improperly against the defendant. Nothing can be more favourable than the impression produced by his testimony. But, my lords, no attempt was made to distinguish this from any other part of the case. These are the words which are stated in the first count of the indictment. The jury had an opportunity of forming their judgment on the credit that was due to this witness; and they having observed the manner in which he gave his testimony; having heard every thing that could be drawn from him on a cross-examination, have arrived at the conclusion that these words were spoken by the defendant. And he stands convicted by the verdict of the jury, of having spoken them for the purpose ascribed to him, namely, that of exciting these persons to conspire in a tumultuous manner, with the view of carrying into execution their illegal purpose. Here then I make my stand. This part of the case I desire to present to your lordships' consideration. The object for which these people assembled themselves was, by their numbers, to intimidate those on whom they meant to act by terror. That could not be effected. They continued assembled but a short time. As soon as they were dispersed, there was an end of it. Mr. Hanson, when he first came on the field, endeavours at the earliest moment to remove from their minds the apprehension of being dispersed, by assuring them that the peace-officers, whose business and duty it was to disperse them, should not on that day do it, and that he would support them with his credit and fortune against any such attempt.

But, my lords, another colour is attempted

to be given to the words used by him. It is said his meaning was, not to hold out to them that he would support them in their then present purpose, but in their endeavours to get a bill passed for the purpose of fixing a minimum in regard to their wages. My lords, the whole of his conduct is inconsistent with that explanation. The fate of the bill did not depend on the question whether the peace-officers should be permitted on that day to disturb this tumultuous assembly, if Mr. Hanson's object had been only to represent to these people, that he would support a future application to parliament, and not to support them in the object they had then in view by the means they were then using, he would not, in the first instance, have told them, that those whose duty it was to disperse them, should not be permitted to do it. If he had come on the field for the purpose he is professing to day, only entertaining that purpose, it is quite impossible that he should have begun by telling them they had nothing to apprehend from those whose duty it was to disperse them.

This leads me to say a few words on the conduct of the magistrates, out of which, as connected with the character of Mr. Hanson, some material observations arise. You observe these persons were organized and were acting by their delegates. To enforce the claims of this meeting, delegates were appointed who were to address the magistrates. This assembly were to overawe them by their power and if they were dispersed, there was an end of the strongest argument the delegates could use. These delegates did apply to the magistrates, and the conduct of the magistrates, in dealing with such an engine of terror as was then directed against them by the meeting, and I must say by Mr. Hanson, was most praiseworthy. They told these persons, who were themselves interested in the object which they wished to attain, that they would patiently and attentively hear them, but not then—that while they professed to represent a multitude of people who were illegally collected together, they, the magistrates would have no communication with them. What were the magistrates collected on the field for? For the purpose of dispersing this meeting. What were their deputies the peace-officers there for? It was their duty to disperse them. Now, my lords, if the object of Mr. Hanson was consistent with that of the magistrates; if his real purpose had been to attain an object that was so desirable, would he not have communicated to them a plain hint of it? If he went into the field for the purpose of prevailing on those whom he thought illegally assembled to return to their homes, to whom would he have addressed himself when he arrived? With whom would he have consulted? Whose assistance would he have solicited? Surely, if that had been his object, he would have addressed himself to the magistrates.

He says he thought he had some influence with the meeting. If he had, that influence would not have been lessened by his assigning this cause, that his object was that which he professes to-day, I will not say, for the first time, but certainly which he professes to-day, without having, either at the time when these persons were assembled, or indeed till he found himself indicted, intimated the slightest idea that was his object. Till Mr. Hanson thought his conduct was observed, till he found he was likely to be called on to defend it, no symptom appeared that his object was, that these people should return peaceably and quietly to their homes. I do not think Mr. Hanson wished them to commit any act of immediate outrage or hostility: I do not think he instigated these persons to go immediately threatening the houses, the windows, and doors of the families of those from whom they wished to receive greater wages. I do believe, if they had told him their object was to pursue that course, he would have dissuaded them from pursuing it, as being an unwise one. I believe Mr. Hanson says that was not the prudent course for the meeting to pursue. But I cannot help saying their object was to attain a rise of their wages, by that intimidation which the collection of such a meeting was likely to produce. And thus the plan was, to keep them collected, (and by the terror produced by their numbers, they hoped they should attain their object) but at the same time to keep so far within bounds as not to give any immediate cause for dispersing them.

Now I need not state to your lordships, that an assembly called together for the illegal purpose of producing a certain effect, by the intimidation which its numbers might produce, continuing collected together for the purpose of producing that end, and raising a great degree of terror by the numbers so assembled, is not less criminal because it does not proceed to acts of violence and outrage, which are not necessary for the purpose of effecting that, which it is the object of such an assembly to obtain.

My lords, perhaps an assembly so collected for that purpose, acts wisely—I do not mean in the large sense of that word—under the cautious directions of a person who will prevent them from extending their tumult beyond what is necessary for effecting their own purpose; who will take care that they are not hurried into any acts of violence beyond that which is necessary for the purpose of attaining their ultimate object? for the very design and caution with which it is managed render the attainment of their object much more probable than if the business were differently directed.

Lord *Ellenborough*.—The only thing that occurs to me is, to ask you in what sense you conceive his promise of pecuniary support is to be understood? To what end was that addressed? It is equivocal in its aspect.

*Mr. Attorney-General*.—My lords their object was, to get their wages raised. They would not work for their old wages. How were they then to support themselves? He tells them what he thinks they were entitled to; that he was the weaver's real friend; he tells them "you cannot live by your labour; there is room for six shillings in the cut, and if you cannot obtain that, I will advance six shillings in the pound. My father was a weaver, I myself was taught the weaving trade; I am a weaver's real friend; I would advise you to be steady, and stick to your purpose, and no doubt you will gain your ends: but I advise you not to disturb the tranquillity of the country. Although you have never seen my face before, you have my hearty good wishes, and I shall always be ready to assist you to the utmost of my power."

I understand the 3,000*l.* were to be advanced to men out of work, in finding them provisions.

Lord *Ellenborough*.—For finding bread to those who were out of work?

*Mr. Attorney-General*.—Yes, my lord.

*Mr. Raine*.—My lords, the words "I will advance six shillings in the pound" never were proved.

Lord *Ellenborough*.—No?

*Mr. Justice Le Blanc*.—The witness could not recollect the expression, and could not speak to it. He told them he was born a weaver, and was the weaver's friend. He said he would go as far as six shillings in the cut, or something of that kind. None of the witnesses prove the defendant made use of that expression respecting six shillings in the pound. These people told him they were starving, and wanted their wages raised as far as six shillings in the pound, or something of that sort.

*Mr. Attorney-General*.—This certainly is that to which I should apply the 3,000*l.* Taking the whole evidence together, his object was to support them in the field, to compel their masters to listen to their claims. He thought that by persevering in the measure they were then pursuing, they would obtain their ultimate object.

My lords, Mr. Hanson never assigns the cause which has been assigned to-day for his going there—that it was to prevent this meeting from doing any mischief. When he comes into the field, he is huzzed; he pulls off his hat, and thanks the meeting for their politeness; he deals out his promises; and when he finds himself observed, then it is that he uses those expressions which have been proved by twenty witnesses on his part, and which words I dare say might have been proved by five hundred.

My lords, a man, who gives that sort of support to a meeting so assembled, shall not escape, because being at last afraid that he

may be called to an account for his misconduct, he changes his tone.

*Lord Ellenborough.*—The words you commented on at first, "Neither Nadin nor any of his faction shall put you off the field to-day," are certainly words of encouragement, and these have been proved.

Your application of the pecuniary assistance promised to these people, would perhaps be a forced construction.

*Mr. Garrow.*—With regard to the application of this 3,000*l.* I submit that it could not be his meaning; that it was to support them while they were out of work. And you will recollect that these eleven thousand had their families at home. That sum, therefore, would not be sufficient to furnish them with provisions for that night and the next day.

*Mr. Attorney-General.*—Mr. Hanson did not go with a book of arithmetic in his hand. He did not hold up to them his purse, and declare how long he would sustain them. But finding this assembly of weavers he tells them to what extent he would go. He tells them his father was a weaver, and that he was the weaver's real friend. Mr. Hanson would not have deserved the character which he has received for wisdom if he did not know very well, that 3,000*l.* would be received by them, without any consideration how many that would support, or how long it would support them.

I have nothing further to add: your lordships must see the enormity of this offence. However illegal the purpose may have been for which these persons were assembled, as most unquestionably it was; still however, many things might be urged in mitigation of their offence, but not for the defendant; Mr. Hanson stands much less excusable. It is not necessary for me to enlarge on this. It is not necessary to point out what the effect of his conduct might have been. He interfered when he certainly had no business. He was not a peace officer of any description. With these observations, I leave him to receive the judgment of the Court.

*Mr. Park.*—My lords, I wish to say a word or two respecting the witnesses, and I do so with the greater pleasure, because the learned judge is in Court who tried the cause.

Wrighton spoke to these very tumultuous words, and I venture to assert without fear of contradiction, that a more respectable and a more impressive witness I never saw in a court of justice. His lordship will recollect he went through a most acute and able cross-examination by one of my friends; and every person was astonished at the accuracy of his memory. He convinced me by his evidence that he had conducted himself like a true soldier. "Did you attend to Mr. Trafford? Yes, because he was my officer. "Now tell us what he said." He repeated every thing he said. I recollect a particular circumstance,

which he stated. He said I thought it was a matter that concerned my king, my country, and myself; and I did not think Mr. Hanson was conducting himself like a good citizen: This he said amidst the admiration of the whole Court.

Now what did this promise of 3,000*l.* mean? What did he mean by supporting them to that extent, and if that would not do, by going farther? We are not to consider how many people his offer would support, or how long; but what effect it was likely to produce on those artificers, many of whom have suffered the punishment of the law. Mr. Hanson did not say the wages were to be raised six shillings; but when the meeting told him "we cannot live unless the wages are raised six shillings in the cut"—he says "I will advance, or give you three thousand pounds."

*Mr. Justice Le Blanc.*—It is not in answer to that.

*Mr. Park.*—My lord, it is almost immediately after. He could not be referring to a bill to be brought into parliament. He must be understood as meaning to contribute to a fund for their support.

There is one further observation. One of my friends observed, that such a man as Mr. Hanson, who has a great influence in that part of the country, was more likely to be able to disperse that meeting than the military. That alluded to Mr. Hanson asking captain Trafford for leave to address this meeting; when captain Trafford refused, and said, "I will not permit you to address these people." However, he immediately went and addressed them of his own accord when all the magistrates were assembled; but he did not go and offer his services to them; which I think, it is pretty obvious he would have done, if Mr. Hanson's intention had been to separate this meeting of three or four thousand journeymen weavers.

There are two periods of time to be attended to by the Court. There is no contradiction in the testimony of the witnesses. All the witnesses for the crown speak to Mr. Hanson's conduct in one part of the day; and the defendant's witnesses speak to his conduct, and to the expressions which he used at another part of the same day. The comptroller of the customs, and other witnesses that were called on the part of Mr. Hanson, were close to him at the time he made use of the expressions deposed to by them; and no doubt these declarations were made by Mr. Hanson, when he saw that there were present officers who were observing his conduct, and then the whole course of his conversation was changed. They never heard a word of what our witnesses swore to.

I have nothing more to add. I should not have troubled you with this; but my learned friend the attorney-general was not present at the trial.

*Lord Ellenborough.*—Let the defendant be

committed to the custody of the marshal, and brought up to receive the judgment of this Court on Friday se'nnight, the 12th inst.

# COURT OF KING'S-BENCH.

May 12, 1809.

## The Defendant appeared for Judgment.

Mr. Justice *Grose*.—Joseph Hanson, you stand here to receive the sentence of this Court for an offence most alarming to the peace of society, viz. the promoting and encouraging a riot among a great number of people, who were in the habit of gaining an honest livelihood by their industry and labour.

The indictment on which you have been convicted, and on which you are now to receive judgment, states, that at Manchester, in the county palatine of Lancaster, where a great number of honest industrious weavers have been accustomed to charge for their commodity a price which the manufacturers were able to pay; a number—alarming to the peace of society—to the amount of more than a thousand, not being content to work at the usual rate of wages for their labour which they had before received; but intending to exact and extort from their masters large sums of money for their labour, conspired and combined to compel their masters to raise their wages. And that, in pursuance of such combination, and in order to accomplish and bring the same to effect, a great number of these workmen had, for a long space of time before, desisted, and did then and there desist from, and totally leave, and refuse to continue to work.

The indictment then states, that you, knowing of these unlawful proceedings, and that these workmen and journeymen were so assembled, went to the place, addressed them, and by speeches encouraged them to persevere in refusing to work; and told them that their cause (that is, their unlawful intentions not to work at the accustomed and usual rate of wages) was good, and that you would support them as far as three thousand pounds would go. You told them to stick to their cause, and said, "I will support you as far as three thousand pounds will go, and if that will not do, I will go further. Stick to your cause and you will certainly succeed. Neither Nadin nor any of his faction shall put you off the field to day. Gentlemen, you cannot live by your labour. There is room for six shillings in the cut: if you cannot obtain that, I will advance six shillings in the pound. My father was a weaver; I myself was taught the weaving trade; I am a weaver's real friend. I would advise you to be steady and stick to your purpose, and no doubt you will gain your ends: but I advise you not to disturb the tranquillity of the country. Although you have never seen my face before, you have my hearty good wishes, and I shall always be

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ready to assist you to the utmost of my power."

Such was the address which you delivered. The intention of this address, and the probable effect of it were obvious. Your intention was, to encourage them to persevere in their unjust claims and to refuse to work at their usual and accustomed wages; and the probable effect of it was, their continuing to disturb the public peace till their ends were answered, or till a sufficient military force should be assembled to disperse them.

It is true that in part of your address you profess to advise them not to disturb the tranquillity of the country; but by such a tumultuous meeting, consisting of such numbers, the tranquillity of the country must be disturbed. You tell them you are the weaver's friend, advise them to stick to their cause, and promise to support them, that is, to support them in riot and idleness, as far as three thousand pounds will go; and if that will not do, you will go farther.

If you had intended that the tranquillity of the country should not be disturbed, you and every peaceable subject would have advised them to separate, and to return to their work. When there was a meeting of upwards of a thousand discontented journeymen weavers in the streets of Manchester, and when we consider the population of a town like that of Manchester, and what numbers of other people were likely to join these weavers, it is impossible but that that town and its neighbourhood must have been greatly disturbed. Your advice was either farcical, or was intended to cover some artful, deep-laid plan. Men with rebellion in their hearts, occasionally use words like you, recommending peace, order, tranquillity, and obedience to the law.

When we contemplate what is stated on these affidavits, the story is hardly credible that a respectable person in society, as your witnesses represent you to have been, the friend of trade, brought up to it, and a friend of the weavers, as you represent yourself to be, should be disposed to encourage a tumultuous assembly of discontented men, the attainment of whose object must in the end be pernicious to themselves, to their employers, and to society at large. It is a material benefit to every rank of society, that manufactures should be sold at as reasonable prices as are consistent with enabling those who produce them to purchase provisions by their manual labour; and at a less price than that they never can be sold; because if by his labour the artificer cannot earn what is sufficient for the duty support of himself and family, he will cease to labour in that line of commerce, and will resort to another. It is necessary that he should receive what is called a fair living profit. If they receive more than that, it very often promotes intemperance and idleness, and prevents that quantity of manufactures from being produced, which otherwise would have been produced. It is advantageous to all ranks of persons that all

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commodities should be brought to market in as great plenty as possible, and that they should be sold as cheap as possible, after they have been brought there. But if the manufacturer be forced to pay unreasonable wages, he must sell the commodity at an enhanced price. And when this is effected by numbers of men assembled in breach of the peace, in a great manufacturing town like Manchester, it leads to the destruction of the trade of the weavers—of the very men who hope to be enriched by it. It is in breach of the peace, and in violation of those laws which being necessary for the support of society, must be sustained.

Your rank and situation in life is an aggravation of your offence, for you must have known what the consequences of such proceedings were likely to be, and that your acting in one way was likely to encourage these deluded artificers; and your acting in the other was likely to check them, and naturally to in-

duce them to return back to industry, and the support of their families. It is our duty to check this by example; to enforce the law, and to teach men, while their lives may be supported by the law, that it is improper to support an assembly in violation of the law, and that he who has done so must be punished.

In order therefore to prevent the repetition of such crimes, this Court, taking all the circumstances of your case into their consideration, doth order and adjudge, that for this offence you do pay a fine to the king of One hundred pounds; and that you be committed to the custody of the Marshal of the Marshalsea of this Court, and there imprisoned for Six calendar months, and farther till that fine be paid.

Mr. Hanson.—My Lords, the consciousness of my innocence, will support me under the present judgment, or any other that your lordships might have been pleased to pronounce.

682. The whole Proceedings, before the Court of King's-Bench, in the Case of ALEXANDER DAVISON, Esq. (some time employed on behalf of the King to purchase Barrack Stores for the use of his Majesty's Military Forces, at a Commission of Two and Half per Cent), for defrauding his Majesty of various Sums of Money, by means of false and fraudulent Vouchers: 49 GEORGE III. A. D. 1808-9.

THE KING

against

ALEXANDER DAVISON, Esq.

The Information was filed by His Majesty's Attorney-general of Hilary Term, 48th Geo. 3rd.

1st. Count.\*—STATES, that on the 25th December 38th Geo. 3rd., and long before and after, the defendant was employed on behalf of the king, to purchase barrack stores for the use of his majesty's military forces, as an agent for a commission; to wit, a commission after the rate of two and a half per cent on the prices of the stores purchased, which commission was to be the sole emolument to be received by him in that behalf, the said employment being an employment of great public trust and confidence.

That the defendant intending to defraud the king, between that day and the 24th of June following, delivered large quantities of barrack stores at pretended prices amounting

to 15,136*l.* 9*s.* 9*d.* as stores purchased by him as agent for such commission as aforesaid, which stores were not purchased by him as such agent as aforesaid, but were made and manufactured by, and were the property of the defendant himself.

And that the defendant on the 31st day of December, 39th George 3rd, did fraudulently produce and exhibit to and in the office of Oliver De Lancey, esq. his majesty's barrack-master-general, divers false, fraudulent and deceitful paper writings, as and for proofs and vouchers that he had purchased the said stores from one George Watson (that is to say), several paper writings as invoices or bills of parcels wherein the defendant was made debtor to Watson for divers articles of barrack stores (enumerating them) at large prices (specified) amounting to large sums of money, (stated).

And one other paper writing as an abstract of the said invoices or bills of parcels, amounting to the said sum of 15,136*l.* 9*s.* 9*d.*

And also, a certain false fraudulent and deceitful paper writing, as a voucher that he had paid to one John Allen, for the use of the said George Watson, the said sum of 15,136*l.* 9*s.* 9*d.* as the amount of the prices of the stores pretended to have been purchased by him as

\* On account of the great length of the Information an *abstract* only is inserted.

aforesaid; which last-mentioned paper writing was and is as follows: viz.

Received 31st December, 1798, of Alexander Davison, esq. fifteen thousand one hundred and thirty-six pounds nine shillings and nine pence for barrack bedding, delivered from the 25th December, 1797, to the 24th of June last, for George Watson.

£.15,136 9s. 9d.

JOHN ALLEN.

And that the defendant, by means of the said several premises fraudulently procured the said barrack-master-general to allow to him in account, the sum of 378*l.* 8*s.* 3*d.* as and for his commission upon the sum so pretended to have been paid as the amount of the prices of the said stores, and above the amount of the said pretended prices thereof:

Whereas in truth and in fact the defendant had not purchased the said stores or any part thereof of the said George Watson, or John Allen, or any other person, and had not paid or agreed to pay the said sum or any part thereof, or any other sum for the price or purchase of the said stores or of any part thereof. In contempt, &c. To the evil example, &c. And against the peace, &c.

*2nd Count.*—States the employment of the defendant, and the delivery of the stores in the same manner as the first.

And charges that he produced and exhibited the receipt as a voucher that he had paid the money to Allen for the use of Watson, and thereby procured an allowance of the commission.

Whereas &c. &c. as in the first count.

*3rd Count.*—States the employment of the defendant as the first.

That he delivered large quantities of barrack stores at pretended prices, amounting to the sum before mentioned, as stores purchased by him as agent for the commission aforesaid, which were not purchased by him as such agent, but were the property of the defendant himself (omitting that they were manufactured by him) and the pretended prices were such as to afford profit and emolument to him.

That he exhibited the false vouchers mentioned in the first count, and thereby procured the allowance of the commission.

Whereas &c. &c. as in the first count.

*4th Count.*—States the employment of the defendant, and the delivery of the stores in the same manner as the third, and charges that he produced the receipt as a voucher, and thereby procured the allowance of the commission.

Whereas &c. &c. as in the first count.

*5th 6th 7th and 8th Counts.*—Charge the like fraud in the half-yearly account from the 25th of June, 1798, to the 24th of December following, in which the pretended prices amounted to 11,272*l.* 19*s.* 2*d.*, and the commission allowed to the defendant to 281*l.* 16*s.* 5*d.*

*9th 10th 11th and 12th Counts.*—Charge the like fraud in the half-yearly account from the 25th of December, 1798, to the 24th of June following in which the pretended prices amounted to 1,945*l.* 11*s.* 8*d.* and the commission allowed to the defendant to 48*l.* 12*s.* 9*d.*

*13th 14th 15th and 16th Counts.*—Charge the like fraud in the half-yearly account from the 25th of June, 1799, to the 24th of December following, in which the pretended prices amounted to 8,624*l.* 6*s.* and the commission allowed to the defendant to 215*l.* 12*s.* 1*d.*

*17th 18th 19th and 20th Counts.*—Charge the like fraud in the half-yearly account from the 25th of December, 1799, to the 24th of June following, in which the pretended prices amounted to 6,553*l.* 8*s.* 9*d.* and the commission allowed to the defendant to 163*l.* 16*s.* 8*d.*

*21st 22nd 23rd and 24th Counts.*—Charge the like fraud in the half-yearly account from the 25th of June, 1800, to the 24th of December following, in which the pretended prices amounted to 1,485*l.* 12*s.* 6*d.* and the commission allowed to the defendant to 37*l.* 2*s.* 9*d.*

In these and the subsequent counts, it is charged that the defendant pretended to have purchased the stores of Allen, and the fraudulent receipt purports to be signed by him as on his own account.

*25th 26th 27th and 28th Counts.*—Charge the like fraud in the half-yearly account from the 25th of December, 1800, to the 24th of June following, in which the pretended prices amounted to 4,365*l.* 12*s.* 2*d.* And the commission allowed to the defendant to 109*l.* 2*s.* 9*d.*

*29th 30th 31st and 32nd Counts.*—Charge the like fraud in the half-yearly account from the 25th of June, 1801, to the 24th of December following, in which the pretended prices amounted to 3,363*l.* 9*s.* 8*d.* And the commission allowed to the defendant to 84*l.* 1*s.* 8*d.*

*33rd 34th 35th and 36th Counts.*—Charge the like fraud in the half-yearly account from the 25th of December, 1801, to the 24th of June following, in which the pretended prices amounted to 188*l.* 1*s.* 6*d.* And the commission allowed to the defendant to 4*l.* 14*s.* 0*d.*

#### Prices Charged.

£.	s.	d.
15,136	9	9
11,272	19	2
1,945	11	8
8,624	6	0
6,553	8	9
1,485	12	6
4,365	12	2
3,363	9	8
188	1	6

52,935 11 2

#### Commission Charged.

£.	s.	d.
378	8	3
281	16	5½
48	12	9½
215	12	1½
163	16	8½
37	2	9½
109	2	9½
84	1	8½
4	14	0½

1,323 7 8½

PROCEEDINGS ON THE TRIAL OF THIS INFORMATION, IN THE COURT OF KING'S BENCH, BY A SPECIAL JURY, BEFORE THE RIGHT HONOURABLE EDWARD LORD ELLENBOROUGH, DECEMBER 7TH, 1808.

The Information was opened by Mr. Richardson.

*Mr. Attorney-General* [Sir Vicary Gibbs, afterwards Lord Chief Justice of the Common Pleas.] Gentlemen of the Jury, if you have attended to the substance of the Information which has been stated by my learned friend, you will have collected from it the general nature of the charge against Mr. Davison. It is, that having as an agent been employed by the barrack office and receiving a commission of two and an half per cent upon all goods which he, as such agent, should purchase from others for government, which commission he received as the price paid for the application of his skill and knowledge in order to secure government from being imposed upon in the purchase of those articles which he bought or was supposed to have bought for them—that receiving this remuneration, and having undertaken to perform this duty, he betrayed his trust—that he pretended to have purchased from others, goods which in fact were his own—that he pretended that the profit upon the sale of those goods accrued to others, whereas, in fact he enjoyed it himself—that he received from government the two and a half per cent commission as the price which they supposed was paid to him for checking the frauds that might possibly be practised upon them by the sellers of the goods, whereas, he was in fact himself the seller and consequently exempt from all check and control.

This is the general nature of the charge now brought against Mr. Davison. It cannot be necessary that I should enlarge upon the very great importance of requiring from those who undertake a trust of this sort the faithful discharge of their duty. The magnitude of our expenditure makes it absolutely necessary that every precaution should be adopted for the prevention of fraud, and it is impossible that any precaution can be effectual, unless those who undertake to control the expenditure of the public money, and who are paid for their services, faithfully perform their duty to the public.

This case would have been brought to trial at the last sittings, but for the absence of a gentleman whose name will be repeatedly mentioned in the course of these proceedings, general De Lancey, the barrack-master-general. The defendant stated to the Court that he could not safely proceed to trial without the benefit of general De Lancey's testimony, and at his request the trial was accordingly postponed.

Having described the substance of the charge against Mr. Davison, I shall now proceed to state the periods of time to which it relates and the pecuniary loss which the pub-

lic has sustained. I think Mr. Davison became an agent to government as long ago as the year 1794, but the fraudulent practices which I to-day impute to him did not commence until the 24th of December 1797; he sent in his accounts half-yearly, and in those accounts which comprehend the interval between the 24th or 25th of December, 1797, and the 24th of June, 1800, this fraudulent practice is first to be found and from that time in the eight ensuing half-yearly accounts it will be seen that the same frauds were practised. The goods which Mr. Davison himself actually furnished, but which by presenting false vouchers, false bills of parcels, and false receipts he induced the officers of the barrack department to believe he had purchased from others, amount to the sum of 52,000*l.* and upwards, and the commission which Mr. Davison received upon this sum for his pretended services in guarding against the impositions of the pretended sellers, amounted to 1,300*l.* I know it will be said, because it has been said before by Mr. Davison, that the country suffered nothing by this practice; he will say, that it is true, that by the letter of his instructions, and by the strict interpretation of the duty which he took upon himself, he ought to have purchased those goods from others, and that he would then have been entitled to his commission upon such purchases; but he will add that he supplied those goods from his own stores at the same price which he must have given to others, if he had purchased them, and that the public have not paid to him a higher price than they must have paid to others; and with respect to the commission, Mr. Davison will say that that was to be paid, however the goods were furnished. To all this I answer, that if Mr. Davison vends to the public his own goods at his own price, instead of purchasing goods from others, the government loses that check which it pays him for furnishing—namely, the application of his skill and his diligence, in the selection of goods of the best quality at the lowest price that the market will afford.

It is obvious that when government appointed Mr. Davison to be a check upon the tradesmen, if Mr. Davison himself is covertly the tradesman who furnishes the goods, the word check is a mere mockery. But the mischief does not stop there; for not only has Mr. Davison the power to supply his own goods at whatever price he pleases without check or control, but government are left wholly unprotected throughout all their transactions in this department, because it is most evident—and this will probably be a feature in Mr. Davison's defence—that Mr. Davison dare not charge for his own goods a larger price than he paid to those merchants from whom he purchased other goods, otherwise the fraud is manifest, and those employed in the barrack office would immediately say, "how comes it that those goods which are supplied under the names of Watson and

Allen are charged at an higher rate than those furnished by Warren or any other person?" That leads to an inquiry, and an enquiry to a detection of the fraud. Therefore by sometimes rendering his own goods as a merchant, Mr. Davison takes from government the only check they had upon the purchase of goods from others, for Mr. Davison dares not refuse to receive goods from others at the same price that he charges for his own: thus he has an immediate interest in defrauding government, in every transaction which passes through his hands, be the seller who he may. Mr. Davison has a direct interest in allowing as high a price as he can, because, furnishing goods to a considerable amount from his own stores, he has an immediate interest in putting as high a price upon them as possible, and he cannot to-day put a higher price upon his own than he allows to the merchant from whom he purchases, as agent to government, to-morrow. This is the complaint I make of Mr. Davison: these are the mischiefs which obviously arise from his breach of trust.

I shall now proceed to explain more particularly the nature of Mr. Davison's employment, how that employment was executed by him, and by what means he effected the fraud of which I complain. In the year 1794, general De Lancey being barrack-master-general, and having occasion to furnish to the different barracks in the country, stores to a very great amount, looked out for a proper person to be employed as an agent for the purchase of the stores upon commission—he wrote to Mr. Davison, and stated that he thought it would be advisable to employ an agent for government on a moderate commission, and general De Lancey tells Mr. Davison that it would be necessary that he should employ such packer as would be approved of by him (the general). I need not enter with more particularity into this letter to Mr. Davison, because in his answer the defendant repeats the terms and states upon what conditions he will undertake the agency. Mr. Davison says, "I shall always produce to you bills of parcels; and, with my accounts, furnish you with receipts from the persons of whom purchases may have been made:" he says likewise, "I shall adhere to your directions in employing a proper packer, and will in a few days name one to you, who, I trust, will meet your approbation." He then says, "after fully deliberating upon every circumstance that may attend furnishing the supplies in question; that the extent and punctuality to be observed therein will require my house to be devoted to the business, which from its minuteness in every measure, will render a continued application absolutely necessary; that a responsibility will be attached to it in proportion to the magnitude of the concern; and considering how far I am locked upon accountable in various points of view, I consider a commission of two and half per. cent. upon the whole

"amount (including all per centages on making insurances, recovering losses, averages, &c., and replacing all damaged or unserviceable articles delivered to barracks within Great Britain) to be what, I trust, you will allow, upon due reflection, but a just and reasonable compensation for executing the business, which I mean and intend shall be *bona fide* the sole emolument that I shall derive therefrom, and whereof proper testimony shall be always forthcoming, when required." So you see that Mr. Davison undertakes the office of agent, for a commission of two and an half per cent, and he professes to general De Lancey in the most explicit terms that that shall be the sole emolument which he will derive from the employment; thereby evidently negating all supposition that he was to receive any other advantage, such as the profit which a merchant derives from the sale of his own goods.

This agreement between general De Lancey on behalf of the barrack office and Mr. Davison having been entered into, I shall now explain how the business was carried on. You have already heard that a packer was to be employed, whose duty was to send in the goods to the several barracks; that packer was Mr. Lodge who will be called as a witness. The goods which were sent to Mr. Lodge were accompanied by delivery notes which ran in this form—Mr. Lodge; receive from A. B., or whoever the person was that sold the goods, such and such goods, enumerating them; and Mr. Lodge returned a receipt for those goods. It was necessary, however, that Mr. Davison should, from time to time, know what goods were delivered to Lodge; Lodge therefore sent to Davison weekly returns of the goods that he received; those weekly returns were not considered of great importance between them, because, at the end of every half-year Mr. Lodge made out from them a return to Mr. Davison of all the goods that had been sent in to him in the course of that half-year. Lodge transmitted the goods to the different barracks in the country and when they were received by the proper officers there, they sent to Mr. Lodge receipts for the goods so received by them for the use of the troops.

You see, therefore, that Mr. Lodge who received the goods in the first instance, sent at the end of every half-year, to Mr. Davison a return of the goods so received, and stated in that half-yearly return the persons from whom they were received. For instance, take the first from December 1797, to June 1798. He begins with, "Remained in store the 24th of December" (then he states what remained in store)—Then he says, "Received from Messrs. Maitlands and Co." (then there is an account, under different columns, of what he had received from Messrs. Maitlands and company)—"Ditto Messrs. Darby and Co."—"Ditto Mr. Sheddon"—and then, at the bottom of these columns there are the sums



total of the quantities, for you will observe that these returns contain the quantities but not the prices. He then takes credit to himself for such stores as he has sent to the different barracks, and he debits himself with those stores which remained upon his hands: This account he renders to Mr. Davison: and, as the receipts come in to him from the different barrack offices, he sends them also to Mr. Davison. And from these returns made by Lodge and these receipts which Lodge obtains from the barrack offices and then transmits to Mr. Davison, the latter makes out his half-yearly return to the barrack office; in which half-yearly return he begins with the stores that remain on hand, and he next states what had been purchased by him in the course of the half-year, giving the same quantities that Lodge had given to him, because they had all passed through Lodge's hands; he then sums up this charging side of the account by charging himself with these amounts; he states afterwards (as Lodge had stated) the quantities sent to the different barracks, which forms the discharging side of the account, he subtracts the amount of this side from what he had charged himself with, and ultimately accounts for the balance remaining in store.

But this is not all that he renders to government; these half-yearly returns contain the quantities and qualities of the articles supplied but not their prices; and in addition to them he sends to government a half-yearly account stating the prices, and not the quantities. This is referable to the return; it shows the prices of the articles that are contained in the return, and the return runs thus:—A return of bedding provided by Alexander Davison, and sent to various barracks: this is an account of bedding provided by Alexander Davison from the 25th of December 1797, to the 24th of June 1798, then follow the names of the persons from whom he states that he had purchased those articles in the course of the half-year. They correspond (except in a particular which I shall state) with the names in his return and in Lodge's return to him. William Bayley is the first—No. 1, 38*l.* 8*s.* 9*d.*, Edmund Darby and Co., No. 2, 7,636*l.* 5*s.* 5*d.*, and so on; George Watson, Do., No. 10, 15,136*l.* 9*s.* 9*d.*, to that I shall presently beg to draw your attention. You observe that after each name I have given you a number. These are the names of the tradesmen from whom he stated in his account that he had purchased the goods; they are numbered 1 to 14, there being fourteen of them. The sum total of this first account is 33,169*l.* 7*s.* 1*d.* The last item of charge is 809*l.* 0*s.* 2*d.*, being the commission of two and half per cent on the 33,169*l.* You observe, therefore, that in this account after stating the prices of all the articles which he professes to have purchased during the half-year, he credits himself with the commission upon the amount of these prices, and adding this to the amount,

he takes a general credit to himself for the sum total.

I stated that after each name a number is placed; that number refers to an abstract (which he gives in at the same time) of the bills of parcels of the tradesman to whose name the number relates. In the letter which I have already read it was stated that he was to produce the bills of parcels and the receipts from the persons of whom purchases should be made; in this half-yearly account, therefore, he refers to the number of what he calls an "Abstract of the Bills of Parcels;" these are half-yearly accounts and the merchants send him a bill of parcels at the end of each month; consequently there are in each half-year six bills of parcels, if goods have been supplied in every month; he gives an abstract of all these bills of parcels, and this number refers to that abstract. I mentioned that one merchant's name was George Watson, as per bill of parcels, No. 10, 15,136*l.* 9*s.* 9*d.*; here is George Watson's abstract by which it appears that George Watson had, at different periods in the course of this half year and under five different bills of parcels, furnished goods to the amount of 15,136*l.* 9*s.* 9*d.* George Watson stands in the half-yearly account as having sold to Mr. Davison goods to that amount, with a reference to the abstract No. 10. Here is the abstract No. 10; it is an abstract of five bills of parcels from George Watson, amounting to 15,136*l.* 9*s.* 9*d.* This abstract refers to the bills of parcels themselves, by corresponding numbers. No. 1, 2, 3, 4 and 5; he gives in, at the same time, the bills of parcels which I hold in my hand, from No. 1 to No. 5, corresponding with the sum stated in the abstract: and at the end of the abstract there is what purports to be George Watson's receipt to Mr. Davison for that sum. You see then that the half-yearly account sets forth all that Mr. Davison professes to have purchased in the course of the half-year from these tradesmen, it mentions the names of the tradesmen with whom he professes to have dealt, it contains an abstract of the bills of parcels which he represents as having been sent in by the tradesmen, it contains copies of the bills of parcels themselves and concludes with the vendor's receipt for the price of the articles furnished.

Besides this, Mr. Davison also rendered a general account (and you will understand that all these accounts are signed by Mr. Davison himself), of his half-yearly expenditure and receipts; for bedding was not the only article which Mr. Davison supplied to government; the contract, or to speak more correctly, the agency, which I formerly described, extended much further, and I should add, that I believe he held other agencies upon commission; but I am now referring only to the article of bedding, which was one of the supplies that he was to provide. This half-yearly general account of receipts and expenditure embraces the whole of his concerns and he therein

credits government with all the sums that he had received on his general account and credits himself with the amount of the supplies which he had provided.—I omitted to mention, that in his half-yearly account, not the *general*, but the *particular* account, he credits himself in the whole with 33,169*l.* 7*s.* 1*d.*, and in this general half-yearly account (which embraces all his concerns) he takes credit for this among other sums: the first article contained on the credit side of this general half-yearly account is: To bedding provided, and charges as per account No. 1. and at the end there appears "balance carried to new-account." You will observe that in all these accounts he takes credit to himself for commission upon the whole, that each of these particular accounts (the sums total of which constitute the general account), embraces a charge for commission, and consequently the general account includes the charge of commission as well as all the other charges contained in the particular accounts.

"And why," it may be said, "should he not receive this commission? You say that he produced regular bills of parcels from the merchants; you say that he produced regular receipts from the merchants for the purchase-money of the supplies which he procured; why, therefore, should not Mr. Davison receive from government his commission of 2½ per cent, for goods thus sold by the merchant to him, and for which he had paid?" Nothing could be more just if the fact were so, but the fact is that many of these goods which Mr. Davison states (and he endeavours to verify his statement by vouchers) that he purchased from tradesmen whose bills he had checked and discharged, were his own goods, were delivered out of his own stores and from which he derived a large merchant's profit; to this merchant's profit he superadded the commission of 2½ per cent, as if he had *bona fide* executed the trust which government reposed in him by acting merely as a check in the purchase of goods from others.

I now proceed to describe how he carried this fraudulent contrivance into effect. I informed you that Lodge (the packer) stated in his returns the names of the persons from whom he received the several articles. A man of the name of Mungo Shedden was Mr. Davison's chief manager and first clerk, and in all or most of the returns made by Lodge the name of Shedden appears as a person furnishing a large portion of these goods. Now, Shedden was not a merchant, was not a tradesman, was not a manufacturer, was not in any way a dealer upon his own account; but he was known to be the clerk and manager to Mr. Davison, who probably thought that if in his half-yearly account with the barrack-office he returned the name of Shedden as the person who supplied these goods to him, it would immediately raise a suspicion that they came from Mr. Davison himself, and therefore

instead of inserting in his half-yearly account with the barrack office the name of Shedden which was inserted in Lodge's half-yearly account with him, he substitutes the name of Watson an inferior clerk in his own office, a man not known. In the returns, therefore, from Mr. Davison to the barrack office, Watson's name is placed against those articles, against which in Lodge's return Shedden's name stands. That substitution is in itself an awkward circumstance, even if it were not accompanied by any others.

In order, however, to entitle himself to the commission, Mr. Davison was under the necessity of producing the documents, which, by the terms of his engagement, he was bound to give in before the barrack-office could be justified in allowing the commission—he must produce bills of parcels from Watson (whom I stated to be an under clerk in his office; but who was in fact merely his apprentice) and he must also produce Watson's receipts for the sums at which the goods are stated to have been sold by him. This Watson could never have furnished these goods, this apprentice of Mr. Davison could never have *bona fide* sent in to his master any bills of parcels, or have received any money from Mr. Davison. But this was to be managed; by the assistance therefore of another clerk (I think a Mr. Allen) bills of parcels of those goods were made out in the name of Watson—"1798, February.—Alexander Davison, Esq. to George Watson, Dr.; for the following articles delivered to Mr. John Lodge, Packer, in all this month." Then follow the articles and the sum 993*l.* 15*s.* There are other bills of parcels five in number for the other months—I am now talking of this first half-year only, these monthly bills of parcels all profess to be furnished by Watson to the defendant, and the half-yearly abstract refers to them by numbers with the corresponding sums, for instance, the first bill of parcels referred to under No. 1, is 993*l.* 15*s.*—In the abstract, the first charge for goods purchased of Watson, is 993*l.* 15*s.*—and so of the others. Besides this, a receipt was also requisite, the defendant therefore gets Allen to sign, as for George Watson received the sum of 15,136*l.* 9*s.* 9*d.*, which is the sum total of the items contained in the abstract, the defendant gets Allen to sign a receipt as for George Watson for the money purporting to be received by George Watson from Alexander Davison, whereas in fact no money was paid by the defendant to this his apprentice.

Thus you see that Mr. Davison—whose duty it was to make purchases from other men and to see that the terms, upon which such purchases were made, were faithfully complied with—Mr. Davison, who was receiving from government a commission of 2½ per cent, upon the prices of all supplies furnished to the barrack department, as the remuneration for exercising his utmost skill and diligence in the public service as an agent,—Mr. Davison

deluding government into the belief that he was during all this time purchasing the supplies from others, and that he was exercising his vigilance to detect any fraud that might be attempted by them, covertly becomes himself a seller of these goods to government, and consequently interested in keeping up the price of those goods in the market as high as possible. It becomes his interest to allow the largest prices to those whose charges it was his duty to keep down, in order that he might sell his own goods at the same high rate. As it was impossible for him to charge more for his own goods, than he allowed to others, it was his interest to keep up that price in violation of the duty, for the performance of which he was amply remunerated by government.

Now this is the complaint which I bring against Mr. Davison in addition to that of his receiving more than 1,800*l.* as commission for his pretended performance of a duty, which he did not merely neglect, but betrayed. What defence can Mr. Davison offer against this charge?—He says, I am told, that government were no sufferers by his conduct; that, if he had acted as I say he should, the same sums must have been received by others from government. I shall not wonder if he should endeavour to shew you, from the prices which he allowed to others, that his prices were not higher than such as were actually received by others under his approbation. I believe the fact to be so, and of that I complain. I complain that Mr. Davison deprived government of the check which they ought to have had upon others through his vigilance. It is no excuse to say that Mr. Davison allowed others to charge as highly as himself: that was matter of necessity, when he became a merchant. When he became, without their knowledge, a seller to government; when he pretended that goods, which in fact were sold by himself, were sold to government by others through his agency; it was impossible that the goods of others which did pass through his hands as agent should not be furnished to government at the same rate as his own. The whole then becomes a fable and a mockery; and there remains no check upon any part of the expenditure. Mr. Davison will not exercise any control over those tradesmen from whom he purchases as agent to government any supplies for the barrack department, because he has a direct interest, not merely not to control them, but to keep up their charges as high as he can, in order that he may keep up his own.

What duty then does Mr. Davison take upon himself and how does he perform it? The duty he undertakes is to ensure to the public the best article at the lowest price, and his remuneration for his trouble in the performance of this duty, is to be, a commission of 2½ per cent, upon the cost of the supplies. The manner in which he discharges his duty is this: a considerable proportion of the supplies he

himself furnishes to government from his own stores, pretending that they are sold by others, he as seller obtains a profit upon them, and government loses the check which they imagine him to be exercising upon others. But besides losing that check which government paid him for exercising, they actually have been paying him two and a half per cent for his pretended purchase, as agent of these goods which in fact were his own, by the sale of which he derived a merchant's profit. "How" it will be said "Does Mr. Davison account for pocketing this commission?" He has accounted for it, gentlemen, in different ways: it has been intimated by him that this was a mistake, that he always designed to restore this to government, and that in a subsequent account which he intended to give in, government would be credited with the amount of the commission. I shall presently point out to you at what period he first set up this pretence; it will be material for your consideration. You will bear in mind that these charges are made in nine different half-yearly accounts from December 1797, to June 1802; that in each of these *particular* accounts he takes credit for the commission upon the price of all the supplies; and that in his *general* half-yearly accounts of expenditure and receipt, he takes credit for the amount of the items specified in the *particular* accounts, and consequently for this commission. And it was not until the year 1806—the last of these accounts being presented in the year 1802—it was not, I say, until the year 1806, when he was questioned upon the subject, and when he found the evidence of these improper, these fraudulent practices pressing him closely, that he thought of returning this commission. It may be considered harsh to say, that it was not until then that he thought of returning the commission, and I should not have felt myself at liberty to use that expression, if his thoughts had not been described by himself—if I had not evidence out of his own mouth, that up to that time he never entertained any intention of returning it.

I must now inform you that Mr. Davison underwent an examination before the military commissioners in 1805, and that in December in that year being interrogated by them, as to the manner in which he conducted this agency-business, and his mode of obtaining the supplies, he admitted that he had himself furnished some goods, but said that upon these he had charged no commission. This did not apply merely to those goods furnished subsequently to 1802. Mr. Davison did supply goods from his own stores; he professed that they came out of his own stores, and the reason assigned was, that he could not get enough in the market,—he publicly professed that they came out of his own stores, and he charged them as coming out of his own stores—he sent in the bills of parcels, "*Bedford-street warehouse creditor to Mr. Davison*" as if they

had been sold, which is no irregular way of stating the account—that his own office was creditor to himself for the goods which he provided as agent for government, and he charged no commission upon them, because he knew that he was not entitled to commission upon goods furnished from his own stores; and when he sent them in, he did not pretend that they came from others, but stated openly that they came from his own stores in Bedford-street-warehouse. In 1805 he stated that he had himself furnished some goods, but had charged no commission upon them, and he produced an abstract of his own bills of parcels from Bedford-street-warehouse to himself, and the receipts of Mungo Shedden for the amount of the goods so furnished.

Shall he, after having represented to the military commissioners that he had supplied some goods himself, but had charged no commission upon such goods,—shall he to day say, “it is true that I furnished goods until 1802 in the names of other men, which actually were my own—it is true that I received a merchant’s profit upon these goods—it is true that I produced invoices as from the pretended sellers to me—it is true that I presented their receipts for money pretended to have been paid by me to them, but which in fact never was paid—it is true that I have received a commission upon these supplies—but it was my intention to credit government with the amount of that commission?” I should regret to hear such a defence set up in a court of justice by any man, because it would call for animadversions which I should be sorry to be compelled by any circumstances to utter.

I would not state this defence for Mr. Davison if he had not stated it for himself. He intended, he says, to give government credit for the amount of the commission in a future account. When Mr. Davison was examined by the commissioners of military enquiry, touching his accounts, they questioned many parts of those accounts; they imputed to him that his charges to government were exorbitant, and that there were many sums for which he ought to have, but for which he had not, given credit. Mr. Davison, who, by the accounts which he rendered and which were thus subjected to the examination of the commissioners, had claimed a balance of 9,368*l.* 12*s.* in his own favour, finding that these accounts had now undergone a very close investigation, and were likely to be still more rigidly scrutinized, finding also that documents were called for, and seeing that any errors in them were likely to be detected, sent in on the 15th of May 1806, what he called a Supplemental account. It is headed thus “Dr. Lieutenant-general De Lancey the late barrack-master-general, in Supplemental account with Alexander Davison, Creditor.” He begins by taking credit to himself, for the balance of account rendered, 9,368*l.* 12*s.* and then he charges “To one year’s rent of warehouses” and he debits himself with sums

which ought to have gone into the former account, but which he now finds were by mistake omitted. “By error in bedding charged 12th November,” and so on, 435*l.* 4*s.* 7*d.* This is dated 1804, but I shall lay before you the accompanying papers which will shew that the corrections of errors in his accounts are carried back as far as 1797, “By losses, averages and deficiencies of stores recovered 11,120*l.* 9*s.* 5*d.* as per abstract No. 1. “By do. No. 2.” 2,959*l.* 9*s.* 5*d.* “By returns of premiums,” 97*l.* 10*s.* 3*d.*, and so on with different articles making up in the whole of these errors, upwards of 15,400*l.*: this turns the balance which had before (upon the last half-yearly account) been 9,368*l.* 12*s.* in his favour, against Mr. Davison; the balance against him being now 6,047*l.* 17*s.* 11*d.* and on the 15th of May, 1806, with this account he renders that balance.

Here then was an examination, made by Mr. Davison himself, of all his accounts; he looked, with a scrutinizing eye, into all the errors which he thought were likely to be discovered—the correction came with a better grace from himself by anticipation, than if the errors had been detected by the commissioners and he had been forced to acknowledge and correct them—he therefore having actually looked through his accounts renders this supplemental account, admits an overcharge of 15,000*l.* and upwards, and pays the balance.

If any persons imagine that I have been making this statement with a view to raise a prejudice against the defendant for omitting these items in his former accounts, and inserting them in this supplemental account, they err: that is not my object. But Mr. Davison having furnished me with his different defences, it is my duty to observe upon them; one of those defences is, that he had intended to credit the public with the amount of his commission; and I produce this evidence to show that that was an after-thought; it never proceeded from his tongue till late in the year 1806, and from what proceeded from his pen till that time, I shall show most conclusively, that it never had entered his mind. Here is the corrected account, drawn up by Mr. Davison himself; here are his reconsidered statements; here is his ultimate determination as to what portion of those sums, with which he had improperly charged government, he will repay; he sets forth items amounting to 15,000*l.* which he had improperly charged to the nation, and which he admits he ought to return to them: in this supplemental account there is no mention of this overcharge for commission; and the omission proves, to demonstration, that at the time of presenting this supplemental account, the defendant had no intention of repaying the amount of the commission. And why had he no such intention? Because he thought it would not be detected: he imagined that he had so well fortified himself by evidence upon this subject, that his misconduct would escape

the scrutiny of the commissioners of inquiry : for all that the forms of office required was, that he should produce bills of parcels and receipts : these bills of parcels and receipts he knew would be inspected by the commissioners, and he was firmly convinced that they would be satisfied with them.

Do you require any further evidence to prove that Mr. Davison did not intend to return the commission? If you do, I can adduce it. Had the defendant designed to return the commission, he surely would have seized the first opportunity for doing it. Now, when the commissioners of military inquiry had Mr. Davison before them, they found it necessary to call upon him for a cash account; for some reason or other Mr. Davison did not chuse to furnish them with a cash account; he chose to excuse himself from doing it, and on the 19th of Nov. 1806, he writes a letter to the commissioners declining to furnish them a cash account. For what reason? Because, he says, his accounts had all been rendered, had been examined, had been settled, and the balance paid; namely, this balance upon his own supplemental account, which I told you he had discharged.

Thus another opportunity presented itself to him in Nov. 1806; when he was so called upon to render a cash account he might, if he had chosen, have then given credit to government for this commission; but, instead of doing so, he says, government has not only no pecuniary claim upon me, but has no right to call upon me for any thing, my account with them is finally settled and closed; the balance has been struck, I have paid that balance over to them, and therefore you, the commissioners of military inquiry, have no right to call upon me for any account. And yet I understand that Mr. Davison means to day to assert that it was his intention to credit government in a subsequent account with the amount of this very commission.

Gentlemen, I am fully aware that it is very difficult to state a transaction of this sort in an intelligible manner—not that it is difficult to be understood by a person who has access to the papers and an opportunity of examining them—but it is not easy to explain it in a mere *vidæ voce* address. I trust, however, that I have given you such a statement of the case as, when the evidence is produced, will make it intelligible to you. My object has been to point out clearly the grounds upon which I charge Mr. Davison with fraudulent practices against the government, and to show the enormous mischief which must obviously result to the public service, from the commission of those frauds. I have likewise thought it my duty, as Mr. Davison had previously undergone many examinations elsewhere, to tell you what were the defences which he has set up, and to prove, by the evidence to which I adverted, and which will be laid before you, the utter impossibility that any of those defences can avail Mr. Davison in a court of justice,

You will, I am sure, gentlemen, bring to the present inquiry all your diligence, all your attention, and every disposition to show, not favour, but a due regard to the situation of a person who is accused of such a crime. I desire not to lead you to any conclusion to which the evidence shall not fairly conduct you. I desire not that your minds should be biassed in my favour; on the contrary, if the scales be left in balance, let it be considered that they preponderate in favour of the defendant. But the facts of the case against him are so overwhelming, that, in the view I have of it at present, and being apprised of the defences which Mr. Davison has hitherto set up, it is utterly impossible for him to shelter himself from the imputation which is cast upon him, and it must be ultimately your duty to pronounce him guilty of the crimes charged upon him by the information.

#### EVIDENCE FOR THE PROSECUTION.

[The following Letters were put in and read:]

LETTER from Major general DE LANCKY, barrack-master-general to Alexander Davison, esq.

" Barrack Office,  
" 28th December, 1794.

" Sir;—Having considered the very great extent of the supplies, from the nature of the present war, necessary for the troops stationed in barracks, and the manner in which the same may be provided, consistently with the economy requisite in all expenditures of the public money, without losing sight of the necessary attention to the comfort and convenience of the troops; and being satisfied, that from the unexpected calls for large supplies, as well as from the experience of the uncertainty arising from trusting to contractors for the due and sufficient furnishing of such articles as are in use in barracks; I have thought it would tend to remove all doubts and difficulties, if a person of extensive knowledge and experience in mercantile matters, and who had been in the habit of furnishing similar articles for government, would undertake the supply upon a moderate commission, subject to such inspection and control as this office should think requisite; I therefore request to know if you will take upon you to supply such articles as you shall be required to furnish according to the following mode and terms:

" Whenever any articles shall be wanted, an order in writing to be sent to you from this office, specifying the nature and extent of the supply; to what place to be sent; and the name of the person to whom it is to be consigned. This order to be considered as a necessary voucher to be produced by you with your accounts, if required.

"A bill of parcels to be sent to this office as soon as the purchase is made, and the receipt of the person from whom the articles are purchased to be produced by you, as the necessary voucher on the settlement of your account with this office. Certificates are also to be produced by you (if required) that the prices charged for the several articles do not exceed the market price at the time the purchase is made.

"That if any saving can be made by the purchaser, or by the mode of issue or delivery of any article, that the amount thereof shall be made a credit to the public in diminution of the cost of such article.

"That no money may be unnecessarily drawn from the Treasury, you will, whenever a payment is to be made, specify to me the amount thereof, and how to be applied; and you will not call upon this office until the same shall be due, according to the customary modes of paying for such articles as are supplied; at which time cash or bills will be given to you, as the nature of the circumstances may require.

"That no loss may arise to the public in any case where articles may be shipped for any distant place, you must, in all cases, insure the same, taking care that the premiums can be proved to be as low as the general rate of insurance at the time, and by the most respectable underwriters. As the supplies for barracks are called for in the most unexpected manner, and the service not admitting of delay, you must, when any order may be given to collect any articles, have the same properly stored till disposed of; and, that no loss may arise from any accident by fire, the same must be insured by you to the amount of the value, stating the terms to me for my consideration.

"When any articles are to be sent from hence, you will employ such packer as shall be approved by me, to whom you will give the most strict directions not to allow any article of a bad or insufficient quality to be received; and in case any such article shall be sent to any barrack, the barrack-master, or person appointed to receive and inspect the same, will have instructions to return them to you; and no charge will be allowed for the original cost, or any expense that may attend the same.

"In the course of conducting the business there will be many circumstances which will require more particular explanation and arrangement, but which will of necessity be made the subject of further instruction. I am only to add, that the rate of commission must depend upon the nature of the business, the expense in conducting the same, and the extent

of the supplies, which, though I may settle according to my judgment of the circumstances, as they appear in the first instance to strike me, yet must eventually depend upon what, on a more full deliberation, I may think more adequate to the service.

"I am to request you will inform me whether you are willing to undertake the business on the terms above-mentioned; and as one particular reason for my adopting this mode is founded on the experience I have had of the necessity of employing a person who will give up his time and attention to the business, and not subject me to the smallest disappointment, I beg you will inform me whether you are assured I shall not meet with disappointments, which, in a case like the supply of barracks, are attended with the most serious consequences.

I am, &c.

(Signed) OL. DE LANCEY,  
A. Davison, esq. B. M. General.

LETTER from ALEXANDER DAVISON, Esq. to Major General DE LANCEY.

"Harpur-street, 10th Jan., 1795.

"Sir;—I have received your letter dated 28th December, relative to the supplies that may be required for the service of your department, and desiring to know if I will take upon me the furnishing thereof.

"Being sensible that this communication is a mark of your confidence, I beg leave in answer thereto to inform you, that my house is disposed to undertake the business on the footing which you state, of an agent upon commission.

"Considering that the necessary supplies of the articles for barracks will be extensive, and that the calls for them will be very considerable and unexpected, and that the nature of the service is such as to render a disappointment of the most serious consequence, it will be necessary for me, in order to furnish the same with all requisite certainty and dispatch, at the same time keeping in view the utmost economy in the expenditure, to adopt preparatory measures that will attach great responsibility to myself; and it will be necessary that I receive sufficient authority in due time, to secure supplies for the probable exigencies of the barrack department, more especially with respect to such articles as are liable to fluctuation in price, in order not to expose the public to inconveniences and circumstances, often arising in a bare or speculative market; and, as those articles may be required to be sent to different barracks, it will be also regular for me to have a written order (as you mention) to serve as my voucher for so disposing of the articles provided,

which I shall be ready to produce, if required; but I must beg leave to observe, that where any supplies may be called for very instantaneously, and that I may have furnished the same upon verbal orders (as I have often experienced in business of magnitude at its outset), in such case, I shall, if no written order is given, consider myself justified by the statements or returns that I may subsequently make thereof to your office, and by the receipts of the persons to whom the articles are consigned, such documents being proofs of the official authority for the measure.

"I shall always produce to you bills of parcels; and, with my accounts, furnish you with receipts from the persons of whom purchases may have been made; as also certificates that the prices charged for the articles do not exceed the rates of the market at the time of purchase. It will be right, however, that the latter be called for within a moderate time from the date thereof; for you must be aware that to obtain such proofs at a very future period, would be attended with the greatest difficulty, if not an utter impossibility. The demands, therefore, for such certificates as may be requisite, should be made to me in due time, though they do not appear to be very necessary, except it may be for the information of others, as you will always, previous to any purchase, be made acquainted with the prices, and all other circumstances, to determine you with respect to the extent and true value thereof.

"I must also remark, that various inconsiderable articles used in barracks are not ruled by market prices, but may vary amongst the few holders, in proportion as they may be scarce when suddenly demanded, and particularly with regard to utensils or furniture to be made of any given pattern, strength, or quality, in any limited time; under such circumstances it would be in vain to establish the current price of such articles; but any proof that can be obtained in this instance I shall be ready to bring forward.

"In regard to drawing funds, I shall have it in view only to apply for such amount as I can state to be required, so as to answer the payments I shall have to make, and to cover me, in due time, against any engagements I may be under in that respect.

"I shall duly observe your instructions as to insuring the amount of articles in all cases where they may be sent by sea, which I shall take care to effect as low as the current rates of insurance doing at the time by reputed good underwriters, of whom I shall always endeavour to make a proper choice, and due intimation thereof shall be given to you, if required.

"As the service of your department

will not admit of any delay in furnishing the supplies as wanted, when, in order to guard against any impediment or disappointment, many of the articles in general use, which would require considerable time to have made of the proper patterns and sizes, should be ordered to be stored in readiness, until the same can be delivered over to the persons of the barrack department, at the places where they may be required, I shall insure them, as you direct, from fire, in the most moderate way, at a value that I may find the stock on hand generally average, observing, that it may be at times more, and at times less than the sum insured, stating, however, to you what steps I take therein, in order that no expense may be incurred without your knowledge and approbation.

"I shall adhere to your directions in employing a proper packer, and will in a few days name one to you, who, I trust, will meet your approbation, and in giving him positive orders not to receive any articles that he may find of bad or insufficient quality; and in case any such shall be sent to any barracks, and that after due and impartial inspection held thereon, they shall be so deemed, I shall be willing to receive the same back, and submit to the loss that may arise therefrom; provided always, that such articles be found unsound or of insufficient quality when delivered into the barracks, and that the damage or unserviceableness thereof may not have arisen through any casualties not depending on the persons employed by me.

"After fully deliberating upon every circumstance that may attend furnishing the supplies in question; that the extent and punctuality to be observed therein will require my house to be devoted to the business, which from its minuteness, in every measure, will render a continued application absolutely necessary; that a responsibility will be attached to it in proportion to the magnitude of the concern, and considering how far I am looked upon accountable in various points of view, I consider a commission of two and a half per cent upon the whole amount (including all per centages on making insurances, recovering losses, averages, &c. and replacing all damaged or unserviceable articles delivered to barracks within Great Britain) to be what, I trust, you will allow, upon due reflection, but a just and reasonable compensation for executing the business, which I mean and intend shall be *bona fide* the sole emolument that I shall derive therefrom, and whereof proper testimony shall be always forthcoming, when required.

"In fine, allow me further to add, that considering the very great trust to be re-

posed in me, as arising from your favourable opinion and confidence, I shall consider myself bound to act as much with a view to your personal honour and credit, as to any possible advantages that I might personally derive, and shall therefore in all matters observe the strictest punctuality, economy, and integrity.

I have, &c.

(Signed) ALEX. DAVISON.

Major-General De Lancey,  
Barrack Master General.

Mr. Thomas Bonsor sworn.—Examined by  
Mr. Garrow.

You are secretary to the commissioners of the barrack accounts?—I am.

Produce a paper called the half-yearly return of bedding from the 25th of December 1797, to the 24th of June 1798.

[It was put into Court.]

Do you know the hand-writing of Mr. Alexander Davison?—I do.

Is his signature upon that paper?—It is.

[It was read by Mr. Lowten.]

"Return of bedding provided by Alexander Davison, and sent to various barracks from the 25th of December, 1797, to the 24th of June, 1798," (Signed) "Errors Excepted, Alexander Davison."

Mr. Garrow to Mr. Lowten.—Do you find George Watson there as the name of a person from whom any supplies are stated to be had?

Mr. Lowten.—Amongst the articles purchased there is "Bought of George Watson."

Mr. Garrow.—Does that appear to have been written at the same time as the rest of the paper, or to be written upon an erasure?

Mr. Lowten.—I believe "Watson" to be upon an erasure and "George" too.

Lord Ellenborough.—Can you observe any traces of the characters which had been there before the erasure?

Mr. Lowten.—No.

Lord Ellenborough.—I suppose it will not be necessary for me to take down the different items?

Mr. Attorney-General.—Certainly not.

Mr. Garrow.—I believe it will not be necessary to read the articles unless the gentlemen on the other side wish it.

Mr. Dallas.—We do not wish it.

Mr. Attorney-General.—The quantity of Watson's supplies your lordship will find material.

William James sworn.—Examined by  
Mr. Attorney-General.

I believe you lived with Mr. Lodge?—Yes.

He is a packer?—Yes.

Was he the person to whom the articles that were to be afterwards transmitted to the different barracks were sent in the first instance?—The articles of bedding and towels.

Who employed him?—Mr. Davison.

Did he render to Mr. Davison, half-yearly returns of the quantity of goods sent in to him to be packed, and of the quantity of goods he transmitted to the barracks?—He did, on the 24th of June and 25th of December, render those accounts to Mr. Davison.

Did he in those accounts state the names of the persons from whom he received the goods?—Yes.

Look at that account. Is it the half-yearly account from December 1797, to June 1798?—Yes; it is one of my own making out.

You observe in the first column a number of names in a line, with each name you observe an enumeration of articles; are these the names of the persons who sold the articles so specified?—They are.

I find among them the name of Shedden: is that Mungo Shedden?—Yes.

Who was he?—He managed the army business for Mr. Davison, at the warehouse in Bedford-street.

That was Mr. Davison's warehouse?—Yes.

Did you know him in any other character than as clerk and manager to Mr. Davison?—In no other character than managing the army business, and the goods that came there on that account.

Whence came those goods that are opposite Shedden's name?—From the Bedford-street warehouse.

That is Mr. Davison's warehouse?—Yes.

Do you know of any person named Watson supplying goods?—Not supplying goods: there was a person of the name of Watson in the warehouse at Mr. Shedden's in Bedford-street, the warehouse that Shedden managed.

Whose warehouse was that?—Mr. Davison's warehouse, which Shedden managed.

Of what age was Watson?—I cannot exactly say.

Was he quite a young man?—Yes.

About what age do you suppose him to have been?—I suppose he could not have been above two or three and twenty, if so much.

At what period?—At the time we had business to do at that warehouse for Mr. Davison.

Did you know a man of the name of Allen?—I did not.

Mr. Attorney-General.—I will put that return in. Your lordship will find that the goods are furnished at different times, but the totals correspond with the amount of articles bought under the name of Watson.

Lord Ellenborough.—I suppose, Mr. Dallas, you will compare them, to see whether the two accounts correspond.

Mr. Dallas.—I am not aware that there is



any difference, but in my view of the case, the fact will be immaterial.

*William James* cross-examined by *Mr. Dallas*.

I believe *Mr. Lodge* is ill?—He is confined by illness.

He was the packer employed by *Mr. Davison*?—He was.

And conducted and superintended the whole of this business?—The whole of the packing business.

Received the articles from the different tradesmen, and packed and forwarded them?—Yes, so far as regards bedding and towels.

*Mr. Davison* had a warehouse in Bedford-street?—Yes.

And *Mr. Shedden* conducted that business?—Yes.

*Mr. Davison*, you know, was at this time engaged in a variety of other extensive concerns?—He was.

A variety of goods appear in the account, under the name of *Shedden*?—Yes.

You at the time knew that these came from the Bedford-street warehouse?—Yes.

And I take it for granted that you knew for a great length of time that goods did come from Bedford-street warehouse in execution of barrack orders?—Yes.

I believe it is in the account from December 1797 to June 1798, that the name of *Shedden* first occurs?—Yes.

*Lord Ellenborough*.—Is *Shedden* the name that uniformly appears to the articles of bedding and towels?

*Mr. Attorney-General*.—No, there are many other persons from whom they had the goods.

*Lord Ellenborough*.—But the name of *Shedden* uniformly appears to the articles of bedding and towels which come from Bedford-street?

*Mr. Attorney-General*.—Yes.

[*Mr. Bonnor* proved *Mr. Davison's* handwriting to all the accounts produced.]

*Mr. Garrow*.—Now put in *Mr. Davison's* account of charges during the same period, and the articles.

*Lord Ellenborough*.—Is there in this account any description of *Shedden*, but merely from Bedford-street?

*Mr. Lowten*.—No. An account of bedding provided by *Alexander Davison* and sent to various barracks from the 25th of December 1797, to the 24th of June 1798. Amongst others there is the name of *George Watson* to the amount of 15,136*l.* 9*s.* 9*d.*

*Mr. Attorney-General*.—Your lordship will see that opposite to the name of *George Watson* is No. 10; which No. 10 refers to the abstract No. 10 of bills of parcels.

*Mr. Lowten*.—The last item of the account is entered thus—commission at 2½ per cent

*Lord Ellenborough*.—I observe the total is 33,169*l.*

*Mr. Attorney-General*.—That includes the commission.

*Mr. Dallas*.—The commission is calculated in one line which is the last line in the account.

*Mr. Attorney-General*.—*Watson's* name refers to the abstract No. 10, which is an abstract of five bills of parcels.

*Mr. Lowten*.—There are five bills of parcels: the amount is 15,136*l.* 9*s.* 9*d.*

*Lord Ellenborough*.—The amount of these bills of parcels is 15,136*l.* 9*s.* 9*d.* the sum charged in the account.

*Mr. Dallas*.—I understand there are two sets of accounts.

*Lord Ellenborough*.—Do you admit them to be correct?

*Mr. Dallas*.—I suppose they are, I have at present no observation to make upon them.

*Mr. Lowten*.—There is a receipt at the end of the abstract:

“Received 31st December, 1798, of Alexander Davison, Esq., 15,136*l.* 9*s.* 9*d.* for barrack bedding delivered from 25th December to the 24th June last, for  
George Watson,  
JOHN ALLEN.”

*Mr. Attorney-General*.—That abstract refers to five bills of parcels each of which corresponds with the summary contained in the abstract.

*Mr. Lowten*.—It does.

*Mr. Attorney-General*.—Read the heading of the bill of parcels.

*Mr. Lowten*.—It is “Alexander Davison Esq. to George Watson, Dr. 1798,

“February, for the following articles of bedding delivered to *Mr. John Lodge*, packer, in all this month:

“1500 Pairs of double or three-breadth sheets at 10*s.* 10*d.* per pair 812*l.* 10*s.*

“500 Pairs of single or two-breadth sheets at 7*s.* 3*d.* per pair 181*l.* 5*s.*”

Making together 993*l.* 15*s.*

*Mr. Garrow*.—The other four are similar.

*Lord Ellenborough*.—The other four are in a similar form?

*Mr. Garrow*.—They are.

*Lord Ellenborough*.—They are stated in the information; if the counsel for the defendant wish to have them read in order to compare them they may.

*Mr. Garrow*.—Here is what is called the general account from the 25th of December, 1797, to the 24th of June, 1798,

Mr. Attorney-General.—The first item on the debtor side is to bedding provided and charges as per account 33,169*l.* 7*s.* 1*d.* which your

lordship will find is the exact sum contained in the half-yearly account of bedding.

[It was read by Mr. Lowten as follows:]

Major General De Lancey, Barrack Master General, in Account with Alex. Davison, from 25th December, 1797, to 24th June, 1798.

1798.		£.	s.	d.	1797.		£.	s.	d.
June 24.	To Bedding provided, and Charges, as per Account -	33,169	7	1	June 25.	By Balance of Account to this date	10,401	12	2
-	- Furniture and Utensils - do. -	5,336	11	0	27.	- my Bill of 10th Dec. received this day - - - -	2,000	0	0
-	- Candles supplied do.	6,602	6	8	30.	- do. - - do - -	3,000	0	0
-	- Coals - do. - do.	30,262	16	11					
-	- Coals, Candles, &c. - do. - - do.	71	17	9	1798.				
-	- Forage - do. - do.	510	19	4	Jan. 10.	- do. - - do. -	5,000	0	0
-	- Insurances on barrack stores shipped - - do.	563	5	2	18.	- do. - - do. -	5,000	0	0
-	- Contingencies - -	240	15	3	25.	- do. - - do. -	3,000	0	0
					Feb. 6.	- do. - - do. -	5,000	0	0
					10.	- do. - - do. -	2,000	0	0
					21.	- do. - - do. -	3,000	0	0
					Mar. 13.	- do. - - do. -	2,000	0	0
					23.	- do. - - do. -	2,000	0	0
					31.	- do. - - do. -	3,000	0	0
					April 16.	- do. - - do. -	3,000	0	0
					May 7.	- do. of 24 Ap. do. -	3,000	0	0
					15.	- do. - - do. -	3,000	0	0
					21.	- do. - - do. -	4,000	0	0
					June 2.	- do. - - do. -	3,000	0	0
					11.	- do. - - do. -	4,000	0	0
					19.	- do. - - do. -	4,000	0	0
					24.	- Balance carried to new Account -	7,356	7	0
						£.	76,759	19	2
					(Signed)				
					Ex. J. STANBANK (Errors excepted.)				
					Approved. London, 24th June, 1798.				
					(Signed)				
					OL. DE LANCEY, ALEX. DAVISON.				
					B. M. G.				

Mr. Lowten.—The total of this account is 76,757*l.* 19*s.* 2*d.* including the charge for commission (specified in the particular account) of 80*l.* 0*s.* 2*d.*

Mr. Garrow.—We will now put in the examination of Mr. Davison before the commissioners of military enquiry.

[The examination was put in accordingly.]

Mr. Attorney-General.—Mr. Dallas, I do not know whether you wish all of this to be read.

Mr. Dallas.—No, I do not.

[The following questions and answers were then read by Mr. Lowten, at the desire of the Counsel for the Prosecution.]

Quest. 11th. What was the course and mode of your dealing with the barrack office, from the order to provide articles

to the time when your account was delivered in for payment?—Ans. I received the order from the barrack-master-general; the goods were procured wherever they could be had the cheapest and the most expeditiously; the examination of bedding was by the packer, who was responsible; the examination of other articles was had at the barracks, and, if not satisfactory to the barrack-masters, they were returned at my own expense; I was responsible for the articles until I got the barrack-master's receipt. My account with the barrack-office was a regular half-yearly one, vouched by the original bills of parcels and the receipts of the parties of whom purchased.

Quest. 15th. Have bills of parcels been regularly sent to the barrack-office immediately after different purchases of

stores have been made by you; and in such bills of parcels were the names of the different tradesmen mentioned from whom such purchases had been made?—  
 Ans. The bills of parcels were sent half-yearly, with my half-yearly accounts; of course the names of the tradesmen appeared therein.

Quest. 26th. During your connexion with the barrack-office were all the articles you provided procured on commission, or were any of them your own?—  
 Ans. There were some articles that were furnished from my army-cloathing warehouse, upon these no commission was charged.

[The following questions and answers were then read at the desire of the Counsel for the Defendant.]

Quest. 24th. Was the warehouse, for the rent of which we see you charge the barrack-office in your contingent account, exclusively appropriated for barrack-stores, and was it open to the general inspection and control of the barrack-officers?—  
 Ans. It was entirely appropriated to their use, and was open whenever they chose to visit it.

Quest. 25th. Did any one, on the part of the barrack-office, ascertain the quantity of supplies you had in store, and examine into their condition, before they were sent off?—  
 Ans. Upon several occasions they were inspected by some person on the part of the barrack-office before sent off, though it was not invariably the case, the magnitude of the business rendering it impossible.

Quest. 26th. Do you know whether the barrack-master had patterns with which to compare the articles you sent?—  
 Ans. I understood so.

Quest. 28th. Who paid the carriage of stores delivered from your warehouse to the different barracks?—  
 Ans. It was

paid by me, but charged in my account to the barrack-office.

Quest. 29th. Had you any per-centage on such carriage of barrack stores?—  
 Ans. I had, I believe, a commission upon the whole expense; but it will distinctly appear by the accounts. (b)

Mr. Dallas.—I wish to have the correction of the answer to question 29 read: it is under note (b) at the end of the examination.

[It was accordingly read by Mr. Lowten as follows:]

“The 17th December, 1805, Mr. Davison having attended to sign his examination, desired to make the following additions and alterations.”

“(b) I beg to correct this answer. I now think I had no commission upon the carriage; but it is a thing I cannot exactly remember; whatever it was it must have been a mere trifle.”

Mr. Attorney-General.—I will ask Mr. James a question, with reference to the extract Mr. Dallas has read.

William James called again.

Mr. Attorney-General.—In what warehouse were the stores that were purchased deposited before being sent off to the barracks?—  
 In Mr. Lodge's warehouse.

They were brought in from the merchant's, were they not?—  
 They were.

They did not pass through Mr. Davison's house, but came immediately to Lodge's?—  
 They did.

And there they remained until they were transmitted to the several barracks?—  
 They did.

Mr. Garrow.—I will now put in what is called a “Supplemental Account” brought down to the 15th of May, 1806.

[It was put into Court and read.]

The following is a statement.

STATEMENT of Sums credited by Alexander Davison in a Supplemental Account with Lt. General De Lancey; with the dates at which the same were received, or credited to him, by the Persons accountable for the same.

		£.	s.	d.	£.	s.	d.
1798.							
July 26.	Loss of Bedding, per Lynx to Halifax.....	3,482	10	0			
June 24.	- Do. - - per Samaritan to Guernsey.....	597	0	0			
1796.							
Dec. 31.	- Do. - - per Europa for St. Domingo.....	2,885	10	0			
Nov. 8.	- Do. - - per West Indian Db. ....	4,135	9	5			
					11,120	0	5
1799.							
Sept. 1.	Proceeds of Bedding, per Minerva, sold at Halifax ..	605	15	3			
—	Average Return of Premium Do.....	1,368	4	3			
Dec. 31.	Return of Premium, per Falcon to Guernsey.....	24	12	0			
—	- Do. - - per Friends Adventure, Do. ....	39	16	0			
—	- Do. - - per Britannia - - Do. ....	2	19	0			
—	- Do. - - per Do. - - Do. ....	23	17	0			
—	- Do. - - per Bridgewater - Do. ....	38	14	0			
—	- Do. - - per Dispatch - Do. ....	32	0	0			
—	- Do. - - per Nancy - Do. ....	52	8	0			

—	- - Do. - -	per London Packet	Do. ....	12 0 0	
—	- - Do. - -	per Harmony - -	Do. ....	3 6 0	
—	- - Do. - -	per London Packet	Do. ....	1 13 0	
1800.					
June 24.	Return of Premium, per Columbia - -	Do. ....	34 10 0		
Sept.	- Do. - -	per Lord Macartney to Halifax	575 0 0		
1804.					
Dec. 31.	- Do. - -	per Britannia to Guernsey.....	6 16 6		
—	- Do. - -	per Mary - -	Do. ....	9 12 0	
1796.					
Sept.	Freight, per Polley to St. Domingo, overpaid	.....	100 0 0		
1798.					
June 24.	Candles for Fort George, not delivered.....		25 18 9		
1799.					
April 30.	Recovered of Owners of Seven Sisters for Bedding short delivered at Gibraltar .....		8 10 0		
Dec. 31.	Do. Do. of Brook Watson, Do. Do. ....		12 14 0		
—	Do. Do. Contractor Do. Do. ....		28 11 6		
1804.					
June 24.	Do. of J. Barker, for inferior Blankets.....		30 15 0		
—	Do. of Redsdale and Co. Do. Do. ....		21 6 3		
—	Do. of W. Peddieson, on Mattresses .....		0 12 0		
					2,959 9 5
1804.					
Jan. 26.	Return of Premo. per Britannia to Guernsey .....		7 0 0		
May 12.	- Do. - per Amity to Do. and Alderney .....		29 18 6		
— 21.	- Do. - per Hope to Guernsey .....		12 18 0		
June 11.	- Do. - per Do. to Do. ....		11 5 0		
Dec. 1.	- Do. - per Fame to Do. and Jersey.....		36 0 0		
— 11.	- Do. - per Do. to Do. and Do. ....		0 8 9		
					97 10 3
— 31.	- Do. - per Eliza.....				10 12 0
June 24.	Drawback on Culm, per Mary.....				3 13 4
1805.					
Dec. 31.	Overcharge on Carriage of Bedding from Yorkshire.....		232 16 3		
—	Bedding lost from Brig Hope.....		26 7 9		
1806.					
Jan. 14.	Drawback on Culm, per British Queen .....		18 10 0		
Feb. 4.	Overcharges by Major Bowater on Coals .....		37 2 5		
1798.					
Feb. 22.	Passage Money for Troops to St. Domingo .....		85 10 4		
1805.					
Aug. 5.	Bedding delivered to Mr. Copland for the use of the Artificers at Barracks .....		452 4 6		

(Signed)

ALEX. DAVIDSON.

Mr. Attorney-General.—Is not the total of the errors cast up.

Mr. Lawton.—It includes losses.

Mr. Attorney-General.—We will now put in Mr. Davison's letter of November 19th, 1806.

[Letter from Alexander Davison, Esq. to Charles Ellis and William Bragge, Esqrs., dated November 19th, 1806, put in and read.\*]

Mr. Attorney-General.—I am now about to prove that in 1803, when Mr. Davison sent in stores on his own account openly, he charged them as on his own account, and charged no commission upon them.

\* It corresponded with the account given of it in the attorney-general's opening speech, and p. 115, and it is therefore not thought necessary to insert it.

VOL. XXXI.

[An account of bedding &c. provided by Alexander Davison from the 25th of December, 1802, to the 24th of June, 1803 inclusive was put in and read.]

Mr. Attorney-General.—Your lordship sees I have gone through all the accounts of the half-year from Christmas 1797, to Midsummer 1798, I will now put in all the accounts of the subsequent half-years up to June 1802. I shall put in these accounts successively and they will correspond with the list in your lordship's hand.

[They were produced by Mr. Bonnor.]

Mr. Attorney-General.—Here is Lodge's half-yearly return to Mr. Davison of what goods he had received; and here is Mr. Davison's return to the barrack-office of the goods he had provided in the same period, cor-

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responding with Lodge's return of the names, excepting that Watson is substituted for Shedden.

[They were put into Court.]

Lord *Ellenborough*.—The only difference is that substitution.

Mr. *Attorney-General*.—Yes. These half-yearly returns form the account which shows the prices but not the quantities, and which refers by number, to the corresponding abstracts of the bills of parcels of each of the supposed sellers. Among the rest there is an abstract of Watson's bills of parcels. The abstract is "No. 11, abstract of George Watson's bills of parcels for bedding bought by Alexander Davison from 25th June to 24th December, 1798," and to the abstract is annexed George Watson's receipt for the amount.

The receipt read as follows :

"Received, 20th June, 1799, of Alexander Davison, Esq. eleven thousand two hundred and seventy-two pounds nineteen shillings and two pence for barrack bedding delivered from 25th June to the 24th December last,  
11,272*l.* 19*s.* 2*d.* for GEO. WATSON.  
JOHN ALLEN."

[The receipt was on a 2*s.* stamp.]

Mr. *Attorney-General*.—Then follow the next half-year's accounts. Your lordship understands that we have delivered in the abstracts and the several bills of parcels.

Lord *Ellenborough*.—Then you have pursued the same course in the production of the particular bills of parcels?

Mr. *Attorney-General*.—Yes.

Lord *Ellenborough*.—Mr. Dallas, do you wish to have the others read?

Mr. *Dallas*.—No.

John Allen sworn.—Examined by Mr. *Garrow*.

Were you at any time in the employ of Mr. Davison?—Yes, I was.

When did you first go into his employ?—In the beginning of the year 1800.

That was your first connexion with him in business?—Yes.

What was the nature of your employment?—I had the management of his books.

Where did he, at that time, carry on his business?—In Bedford-street.

What was the nature of his establishment there?—An army clothing warehouse.

Had he a person of the name of Watson in his service?—Yes.

Was he a clerk, or an apprentice?—He had been an apprentice to Mr. Davison: he either was or had been an apprentice.

Of what age was he?—Upwards of twenty.

Was he a person of any property, or carrying on any business of his own?—I do not know that he was.

How long did you know him in Mr. Davison's employ?—A year and a half, or two years.

If he had carried on any business during that time, I suppose you must have known it?—He did not carry on any that I know of.

Should you have known it if he had?—Probably I should.

Was he in the capacity of a servant?—He was.

Did you at any time carry on any separate business of any sort on your own account?—No, not at that time.

Lord *Ellenborough*.—Of what age was Watson in 1800?—I suppose he was two or three-and-twenty, but I cannot say positively.

Mr. *Garrow*.—Look at that paper, whose hand-writing is it?—The whole of it is my hand-writing.

I see this is dated the 31st December, 1798?—Yes.

And purports to be a receipt from you to Mr. Davison, "for 15,136*l.* 9*s.* 9*d.* for barrack bedding delivered from the 25th December, 1797, to the 24th June last;" did you write this on the day on which it is dated?—No.

I see it does not purport to be for bedding delivered by yourself, but for bedding delivered by Watson: you signed it for Watson?—Yes.

Did you know Watson in 1798?—No.

When did you, in fact, write this paper?—In the year 1800, but in what part of the year I cannot now state.

Had the sum of 15,136*l.* 9*s.* 9*d.* been paid to you for Watson?—I received no money.

As far as you know, had such a supply been made by Watson as to raise such a demand?—Not by Watson.

The paper imports that supply to have been made by Watson?—Yes.

Upon what occasion, and at whose desire, did you write out this paper?—By the desire of Mr. Bowring.

Who was he?—A clerk to Mr. Davison.

Where did you prepare this paper?—At the office in St. James's-square.

Is that the residence of Mr. Davison?—It is; in the common office.

It is an office, I suppose, adjoining to his dwelling-house?—It is.

Who supplied you with the form in which you were to do this?—I believe Mr. Bowring; it must have been he.

Had you any communication about it with any body but Mr. Bowring?—Mr. Shedden mentioned it to me first.

What was Mr. Shedden?—He was manager of Mr. Davison's warehouse in Bedford-street.

Where did he first mention the subject to you?—In Bedford-street.

How long was that before you went to St. James's-square, where you completed the paper?—I cannot now say.

Was it hours, days, or weeks?—I cannot state positively: it might be the same day, or might be a week before.

Were you usually attending at the office in St. James's-square?—No, at the warehouse in Bedford-street.

Were you directed to go to St. James's-square about it?—I was.

Did you sign any other papers of the same sort?—Yes, I did.

How many?—I cannot recollect.

Recollect as near as you can?—I signed half-yearly accounts for four or five years.

Did you sign them at once?—The early ones were all done at once.

They were for years, during which you had no acquaintance with the subject, or with the parties?—They were.

You think Bowring furnished you with the form: who furnished you with the sums, and the particulars you were to insert?—They were given me at the same time.

When were you called upon to sign other papers for periods not so distant?—As the half-yearly payments came round.

Where is Mr. Shedden?—I believe he is dead.

Who applied to you to sign the subsequent half-year's account?—Mr. Bowring.

You always went to the house to sign them?—Yes.

I apprehend that those which were for periods before you came to Bedford-street were nominally for Watson's transactions?—All that I signed were.

Mr. *Attorney General*.—The accounts from June 24th, 1800 to June 24th, 1802 purport to be of purchases made from Allen himself: the receipts are signed by Allen as for himself, and the bills of parcels are as from him.

Before I go to them I may as well state what this paper is to which I have been examining him so particularly. It is an account of stores bought of George Watson; the sum total is 15,136*l.* 9*s.* 9*d.* and annexed to it is this receipt: "Received, 31st December, 1798, of Alexander Davison, esq. 15,136*l.* 9*s.* 9*d.* for barrack bedding, delivered from December 25th, 1797 to June 24th, 1798.

For GEORGE WATSON,  
JOHN ALLEN."

Mr. *Garrow*.—Is this paper your writing?—It is.

Written at the application of Bowring?—Yes.

It is "Received 1st June, 1801, of Alexander Davison, esq. one thousand four hundred and eighty-five pounds, twelve shillings, and sixpence, for bedding to the 24th Dec., 1800.—John Allen." Did you receive any such sum?—I did not.

Lord *Ellenborough*.—I should have apprised you that there are several of these questions which you may refuse to answer as tending to criminate yourself. It did not occur to me earlier.

Mr. *Dallas*.—As far as Mr. Davison is concerned, I have no objection to the witness answering any question.

Lord *Ellenborough*.—I only give you this

general caution; if any question is put which you think tends to criminate yourself, you may apply to me, and I will tell you whether you are obliged to answer it.

Mr. *Garrow*.—Did you, on June 1st, 1801, receive from Mr. Davison the sum of 1,485*l.* 12*s.* 6*d.* on that or any other account?—I did not.

Did you at any time supply to him, or for his use, bedding, or any other article, to that, or any other amount?—No.

From what place were the articles actually supplied which are supposed to have been paid for by these sums of money?—From Mr. Davison's warehouse in Bedford-street.

Out of his own stores?—Yes.

Did he manufacture, or cause to be manufactured for his own use articles of that sort?—He did.

Bought the raw material, and manufactured it into the commodities that were supplied to government?—He did.

*John Allen* cross-examined by Mr. *Wilson*.

Mr. Davison's business as an army-clothier and maker of bedding stores for barracks, was carried on at Bedford-street only?—Only, to my knowledge.

Mr. Davison was concerned in a great many other branches of business?—He was.

Where was his general office kept?—In St. James's-square.

Had Mr. Bowring any thing in particular to do with the Bedford-street warehouse, or was he Mr. Davison's principal general clerk?—Principal general clerk.

Then I suppose he did not often come to Bedford-street warehouse?—No; very seldom.

When there was any occasion to apply to him, it was necessary to go to St. James's-square?—Yes.

There he was in his office?—Yes.

And upon this occasion you were sent by Mr. Shedden to Mr. Bowring?—Yes.

And you signed this paper by Mr. Bowring's desire?—I did.

Did Mr. Bowring give any reason at that time for this transaction?—He said Mr. Davison could not appear both as buyer and as seller in the same account; that was the reason assigned to me.

At that time you knew perfectly well that these transactions, for the first two years, had taken place before you entered Mr. Davison's service?—Yes.

And this was the reason assigned by Mr. Bowring?—It was.

Was the same reason assigned for the receipts and bills of parcels subsequent to 1800?—To the best of my recollection the same reason.

Mr. Shedden I believed was the particular superintendent of the Bedford-street warehouse?—He was.

How many clerks were employed there?—Four clerks, or apprentices.

How many workmen were there in that

warehouse?—That I cannot state; I do not recollect; there was a number of men constantly cutting out the different articles of work.

And a great many, others coming occasionally with the work that was done out of doors?—An immense number.

How many were there in all employed in the house, and coming backwards and forwards?—I cannot say within a hundred; there were several hundreds of them; there was an immense number of people.

Mr. Davison's warehouse there was principally an army-clothing warehouse?—Yes.

That was supplied, I suppose, to the different colonels of regiments?—Yes.

When any particular supply was wanted for the barrack board, were the men taken off from the army employ, and put to this barrack business?—I do not know that.

But the bedding business was carried on there; the things were made in that warehouse?—They were cut up in that warehouse.

Was any other set of men particularly employed for cutting up the bedding?—Not that I know; they were the same men.

When one business was carried on the other must stop, I suppose, entirely, or in a great degree?—I am not acquainted with that subject.

All the goods for which you signed those receipts were sent from the Bedford-street warehouse to Mr. Lodge's?—They were all sent to Mr. Lodge's.

Mr. Lodge was the packer employed for the barrack business only?—I understood so.

Were they sent in carts?—I never attended the delivery of them.

Did you not see the carts?—I do not recollect that I ever did.

Was there any secrecy about sending them?—None at all.

Was it perfectly well known in the warehouse that those goods were going to Mr. Lodge's?—Perfectly known: There were always two slips of paper sent with them.

There was no secrecy about sending them to Mr. Lodge's?—None at all.

Were any other goods sent from the Bedford-street warehouse to Lodge's except those that were manufactured at the Bedford-street warehouse?—I do not know that there were.

None to your knowledge?—None to my knowledge.

I mean when there were any purchases made by Davison from other manufacturers for the use of the barracks, did they go from those manufacturers' houses direct to Mr. Lodge's, or come first to the Bedford-street warehouse and thence to Lodge's?—That I do not know.

Do you know an instance of any coming first to the Bedford-street warehouse and then being sent to Lodge's?—No.

They were sent publicly to Lodge's? no secret was made of it?—None.

And it was known to every body in the

warehouse as well as to you?—I believe it was.

*John Allen* re-examined by *Mr. Attorney General*.

I observe these receipts are signed by you as for money received by you for Watson?—Yes.

Where was Watson at that time?—I do not know.

Was he about the house?—A considerable part of that year he was absent.

Do you know where he was?—I do not know.

How many clerks had you there?—I believe there were four; there were four or five clerks and apprentices.

Was Watson absent at the time you signed those receipts?—I do not know whether he was or not.

Where had you been before 1800?—I was not in London.

Where were you?—I was in the west of England.

The person who had the ostensible management of the warehouse in Bedford-street was Mungo Shedden?—Yes.

*Mr. Attorney General*.—That is my case.

#### DEFENCE.

*Mr. Dallas*.—[afterwards Lord Chief Justice of the Common Pleas.] Gentlemen of the Jury; You will all most readily believe that I rise to discharge my present duty under the impression of the deepest anxiety—an anxiety which I should be ashamed not to feel when I consider the nature of the case which you are now assembled to investigate. This may be described generally as a charge of fraud—a fraud alleged to have been committed in the execution of a public employment of great trust and confidence; a fraud to which this gentleman's only motive could have been a base and sordid desire to embezzle, by betraying the confidence reposed in him, and violating the plainest principles of honesty and honour, a comparatively small sum beyond what he must at all events have received. It is quite impossible for me not to feel that such an accusation must, with reference to the person who is the object of it, involve in its issue all that can be dear to him, and to his connexions on this side of the grave. You will not wonder, therefore, that on the present occasion my anxiety should be very great; and I cannot believe that yours is very inconsiderable; for it is impossible that any men, who have a due regard for the safety and welfare of their fellow creatures, should feel indifference when they reflect upon the magnitude of the stake which depends upon this day's decision.

This alleged fraud is stated to consist in the breach of an agreement, which, upon the application of the barrack-master-general, the gentleman who is the object of this prosecution appears to have entered into in the year 1795. Before I make any observations upon the evidence which has been given on the part of the

crown, it will be necessary, in order to make all the circumstances of this case thoroughly intelligible, to draw your attention to the manner in which the public business of the barrack department had been conducted before that agreement which unfortunately forms the subject of our present enquiry was entered into.

Previous to the year 1795 the different barracks had been supplied with the various articles required for them, by the barrack masters upon the spot, who, of course purchased their stores of the dealers in the neighbourhood, and the amount of the prices paid by them for these stores being certified to the barrack office they were allowed, in addition to their fixed salary, a commission of five per cent upon all their purchases. This system had been productive of a great variety of frauds on the part of the subordinate agents; it became necessary to inquire into the conduct of several of these public servants, the result of which was, that some of them were suspended and others were dismissed; and towards the end of the year 1794, general De Lancey, who was then barrack-master-general, having experienced the great inconvenience and injury to the public service which, under the old system, pervaded every branch of the department, found it necessary, in the discharge of his official duty, that some other method of supplying the public wants should be devised and adopted. He was of opinion that the best plan to pursue would be to employ a person of great mercantile skill and experience as an agent for purchasing the stores required by the department: and he immediately considered to whom it would be advisable to apply for this purpose.

General De Lancey will tell you that at that time he was a perfect stranger to Mr. Davison: that he had never upon any occasion whatever, met him in public or in private, and that his only inducement for an application to this gentleman was, that Mr. Davison having been in the habit of transacting public business to a very considerable extent, the gallant general was accustomed to hear his name mentioned daily in the different public offices as a man who had conducted that sort of business with the utmost regularity and punctuality; it therefore occurred to him that it would be highly beneficial to the public service if Mr. Davison would undertake the employment. I beg of you to bear it in your minds, because calumnies of the most dangerous consequence to the gentleman for whom I am concerned have gone forth upon every part of this case, that when the transaction which is the foundation of this charge took place between general De Lancey and Mr. Davison, there was no acquaintance between them, and that the application merely originated in the circumstance of Mr. Davison being known to be a person of great skill and experience, and who had already at different times exercised under the government of the country employments of the same sort.

At the period of which I am speaking and before any application was made on the part of general De Lancey, the defendant in this case was, as you have been told by one of the witnesses for the prosecution, engaged in various and extensive scenes of business both public and private. With regard to his private concerns, he was known (and probably you are not unacquainted with the fact) to be one of the most considerable merchants in this city. He had been employed by government in contracts for supplying stores to various departments, for providing for the expedition to Holland, and in particular, shortly before general De Lancey's application to him was made, he had returned from filling the important station of commissary to the army under the command of a noble lord now in my eye whose presence forbids my speaking of him in terms which, upon every other occasion, I should be proud and happy to employ. Such was the situation of Mr. Davison, when, without any step having been taken on his part, at the conclusion of the year 1794, general De Lancey, the barrack-master-general, wrote to him the letter which has been read in evidence this day, in which, and in the defendant's answer to it, the attorney-general in the conduct of this prosecution, alleges, is to be found that agreement, with the fraudulent breach of which the defendant now unfortunately stands charged.

It is not at the present moment necessary for me to enter upon a detailed examination of all the different provisions which the application, taken with the answer (which together constitute the agreement), contains. In this stage of the business it will be enough that I shall draw your attention to some of its general leading provisions. You must already have observed that this is not a contract under which the defendant was merely employed occasionally, so that each dealing could be taken as a distinct and separate transaction, beginning and ending with itself:—but it was a contract, the very nature and essence of which was, that there should be upon his part a superintending vigilance constantly directed towards the growing wants of the public service, that, in the faithful observance of the trust reposed in him, he should anticipate those wants by attending to the most essential particulars, lest those inconveniences, the existence of which had chiefly led to his employment, should again arise; and that, in fine, he should guard against the possibility of disappointment from any deficiency of the market when any articles of supply were required by the barrack department. He was bound to take care not only that the public should in each particular instance be well supplied; but also that whenever an order was sent from the barrack office it should be immediately and punctually executed. In addition to this you will find that the remuneration he was to receive (and the observation will become more material hereafter) was not merely a compensation for



making the bargain in each particular instance, but it was also a compensation for that care and diligence which he was to bestow in the execution of the employment created for him, by taking care that those different articles were safely deposited in a place from which they could readily be drawn when wanted, by taking care that they were of the proper quality, and if any were of a different description to return them; he was also to provide for the transmission of them, from the city to the place where they were wanted—for the discharge of all these duties he was to receive the remuneration which has been stated. This is a general outline of the leading articles of the agreement, and I will freely admit that with respect to all the important points there will be no difference of construction between the attorney-general and myself.

It certainly does appear that under this agreement Mr. Davison was employed as agent, and I admit that he was so employed upon a stipulation that he should receive the commission and no other emolument. He was to deliver in as his vouchers the bills of parcels from the different persons of whom his purchases had been made; and therefore I have no difficulty whatever in declaring that if it should appear that in the execution of this employment, Mr. Davison, without any authority from, and, even without the knowledge, of the barrack-master general, for a long period of time, that is, for the space of five years, continued invariably to supply articles from his own storehouse in the name of another, undoubtedly, that would be a fraudulent execution of the agreement, and for the plainest of all possible reasons, because here his duties did not merely depend upon any general relation of agent to the barrack-master-general, his duties were created and defined by the positive stipulations of the particular contract under which he acted, one of which stipulations was, that he should receive no other emolument than the commission. To have become therefore a seller of his own commodities under the assumed name of another man would have been a deceitful execution of the contract and therefore a fraud. The selling his own stores, unknown to the barrack department, when he had no authority to do so, would be a breach of his contract by his receiving more than the stipulated allowance of two and a half per cent. I have no difficulty whatever in stating that; and I trust you will do me the justice to admit that I at least meet the case of the prosecution fairly and openly when I say that if in any one instance, and still more in a great variety of instances, it had been the practice of Mr. Davison, in the names of other men to vend his own goods to the public, under his agreement that he should buy of other men, and then to charge commission upon fictitious bills of parcels and receipts—I say it would be quite impossible for me, on behalf of the defendant, to offer any justification whatever to any such case established by the crown.

Such then is the general nature of the agreement and such the obligation which it imposes. I will now draw your attention to the charge founded upon the alleged breach of this agreement. The charge is, that, being employed as agent, at a commission of two and a half per cent, and under an engagement that he was to derive no other emolument whilst he was so employed (i. e. in the execution of his duties as agent) he, from time to time supplied to the barrack-office stores made and manufactured by himself as if they had belonged to and been sold by other persons; and that by fictitious bills of parcels and invoices, he imposed upon the barrack-master-general, who had no other knowledge of the fact of such supply, to allow him the commission which he would not otherwise have received. The foundation of this charge is, that he derived an undue profit to himself, which is stated to have consisted in the receipt of commission to which he was not entitled; and the fictitious papers are alleged by the information to be the means by which the same was obtained; i. e. the same was fraudulently obtained because he had no right to it in the form of commission.

Having now fully explained to you (and I trust that every gentleman upon the jury thoroughly understood me) what this charge is, it is not immaterial to consider what it is not. Before entering upon the examination, however, I cannot refrain from observing upon those shameful practices which for a long time past have been resorted to for the purpose of exciting, not only in your minds, but in the mind of every man in this kingdom, the most scandalous prejudices against this gentleman, with a view to deprive him of that which is equally the right of innocence and of guilt, to deprive him of a fair trial—practices, I am sorry to add, which, by an unexampled degree of persecution, far from decreasing in virulence and in numbers, were aggravated and multiplied as the hour of trial was approaching.

It is the fate of every man who is placed in a public situation, or who has dealings of any kind with the public, that his conduct is peculiarly liable to be misunderstood and misrepresented; and above all—of this, however, I do not complain—to be made the subject of public discussion and inquiry. I trust it will not be supposed that I am now speaking with reluctance to reports made by those honourable persons upon whom has been imposed the duty of inquiring into transactions of this nature and of reporting the result of their investigations to the House of Commons. Whether they have pursued the inquiry precisely in that way in which I think they ought to have carried it on, it is not for us to determine, nor are my sentiments upon that subject at all material; I do not complain that in the course of their inquiry they have presented these Reports to the House of Commons—that the House have (as is their usual practice) ordered them to be printed for the use of their own members, and

that they have got into the hands of other persons; of this I do not complain: but I do complain of that unwarrantable calumny and abuse, which is calculated not to inform but to inflame the public mind, and which is daily and hourly circulated by the different publications vended in this town. Of this it is impossible for any man to trace the immediate operation or to foretell the ultimate effect. It has naturally however created in the defendant feelings of the deepest anxiety and uneasiness; in his name, therefore, and in the name of that justice whose ministers you now are, I intreat that if any of those publications have found their way to your hands you will discard from your memories whatever you may have read concerning the conduct of this gentleman; I intreat that upon the present occasion, at least, you will do him the justice to confine your attention solely to the precise and specific charge contained in the information, and to the evidence which has been adduced in support of it.

I was about to point out to you what this charge is *not*. It is material in the first place to inform you, that although it now appears upon Mr. Attorney-General's statement, supported by the evidence that has been given, that during the whole period of nearly ten years in which this gentleman fulfilled the employment of agent for the supply of all such stores as were wanted by the different barracks, it is not imputed to him—after all the investigation that has taken place—after all the unusual powers (I do not complain of them, but unusual they are) with which the commissioners of inquiry are invested, such as the power to send for every book, to require the production of every letter, to interrogate every clerk, and to examine even the party himself—I say, after an investigation of this sort into the daily transactions of a period of ten years, it is not now imputed to this gentleman, who is charged with defrauding the public as a contractor, that he did in any one instance, whether the goods were purchased elsewhere or were sold by himself, charge more than the fair market-price of the day. It is no answer for the prosecutor to say, that Mr. Davison had it in his power (which I will prove that he had not) to regulate the price of the articles; because it was at least open to inquiry and might have been ascertained, upon a comparison of each period with that which immediately preceded it, whether there was not (I will prove that there was) a most important saving to the public upon all the dealings carried on by Mr. Davison. You will remark, therefore, that it is no part of this charge that he has fraudulently or improperly conducted himself in that respect. Although the information states that these articles were regularly supplied from his own stores, *i. e.* sold by himself, and although it would of course become the duty of those who were appointed to inquire into these transactions to ascertain the quality and the value of the article, it stands now a confessed and ad-

mitted fact, that in no one instance whatever, have they been able to discover that with this unlimited trust and confidence reposed in him, and selling to the public goods which belonged to himself, he obtained an higher price for those goods than must have been paid for them if they had been purchased elsewhere, or that he was guilty of any malpractices to raise the market-price of the articles in which he dealt.

There is another circumstance which is also extremely material for your consideration, namely, that after the investigation which has been applied to every part of his conduct, having been obliged, as you will find, to employ great numbers of persons to whom orders to a very great extent were given, it is not now imputed to him that he has, in any single instance throughout the whole of these transactions, had any improper participation or connexion with any person in the Barrack-office, or with any individual tradesman—that there has been any secret clandestine understanding between him and any of the persons with whom he was concerned. After dealings to so large an extent that nearly a million of the public money passed through his hands, I am entitled to say—and I proclaim it upon this occasion with pleasure and with pride—that Mr. Davison now stands perfectly absolved from all these dark and mischievous insinuations—mischievous because coming in that form, and not in the shape of open direct charges. Upon the reports of these different commissioners and upon a review of the whole of his conduct throughout this long period and these extensive dealings, his prosecutors have been able to select a single instance only of what they call an improper charge, and which is the charge of commission uniformly made during a particular period of time in which he is stated to have acted in this employment.

I hope I shall not be misunderstood: I do not mean to say that it is any answer to a specific charge of fraud, to allege that the person accused has in every other instance of his life conducted himself honourably and uprightly; most certainly it is not: but that is when the fraudulent intention is ascertained. When, however, the inquiry is not as to the mere fact, but as to the motive; and when you find that in the course of some transactions, facilities for the commission of frauds presented themselves every day and every hour, which, if the party had availed himself of them, would have been more difficult of detection, and which would have enabled him to reap advantages to an extent almost incalculable, such circumstances are most material. Upon a doubtful question of motive it is surely fair to say we must look round and discover what has been the general conduct of the party in all similar transactions in which he has been engaged; because if we find that on every other occasion he has conducted himself fairly and uprightly there is no reason why we should conclude that he has intentionally

departed from that conduct in one solitary instance. I direct your attention to this as worthy your consideration when the inquiry is not as to an act which is not disputed, but as to the motive from which that act proceeds.

I have already stated to you that under the original agreement Mr. Davison was certainly not at liberty to sell his own stores to government and to charge commission upon the sale. I shall now consider what evidence has been given on the part of the Crown; and without going through a detailed examination of these accounts (which is not necessary) they may be said to amount only to this:—that from a particular point of time, *i. e.* from the end of the year 1797 until the year 1802, Mr. Davison does appear in point of fact to have supplied the barrack-department with stores belonging to himself in the names of persons who at that time were clerks in his office, and to have charged a commission upon those supplies: that is the result of the evidence; and the charge is, that by so doing he imposed upon general De Lancey, and obtained a commission to which he was not entitled.

Pausing here for a moment I think it must have struck you as somewhat extraordinary, that although the employment of this gentleman commenced in the beginning of the year 1795, it should be made a part of the case proved in support of this prosecution, that he never, during the first three years, in any single instance furnished stores belonging to himself; there is not one of you who, reflecting for a moment upon this single fact, must not already suspect that there is in this case a great deal more than has hitherto been brought forward: For it would be most extraordinary indeed, that this gentleman, during three successive years should never sell a single article belonging to himself; that during that period he should not receive one shilling of commission to which he was not entitled (and this is admitted by the counsel for the Crown), and that then, without any motive to such conduct, without any reason for it, he should all at once turn round and change his practice, should continue uniform in that change of practice, and should thenceforth until the year 1802, constantly supply, under the names of his clerks, articles belonging to himself, and receive the commission. This is a most extraordinary circumstance, and must have led you to suspect that it was impossible that the whole of the case can be in proof before you at the present moment.

There is another circumstance which I confess, would have appeared to me as rather singular, if I had never heard of the case until I came into court this day, namely, that when the charge against Mr. Davison is specifically that he covertly and privately gave himself an interest to connive at fraud, by selling what he was not entitled to sell to the public, and that this imposition was practised upon general De Lancey, I say I confess it does appear

to me as rather singular that general De Lancey himself should not have been called by the attorney-general, to prove that the defendant, Mr. Davison, was in the situation which my learned friend has described; *i. e.* that he was, covertly and clandestinely, without the authority of the barrack-master-general, and by a fraudulent violation of his contract, becoming himself the seller of those articles, and charging a commission upon his own supplies. Is it not a most extraordinary circumstance that general De Lancey, the barrack-master-general, the officer who on behalf of the public and of the Crown originally entered into this contract with Mr. Davison, should not have been called as a witness to tell you what the facts really were? That certainly is a circumstance of striking singularity, nor will it be accounted for, by stating that the trial was put off last Summer, at my application, on account of the absence of general De Lancey. General De Lancey has since returned to England, he is now present, and will be called before you; it was therefore competent for the Crown, before this case was brought into court, to have obtained from general De Lancey any information, any facts that might be within his knowledge. General De Lancey, however, has not been called by my learned friend.

There appears, even by the admission of the attorney-general, to have been, upon the part of Mr. Davison a faithful performance of the original agreement until the end of the year 1797; *i. e.* being bound to purchase from other dealers and to produce their bills of parcels as vouchers, he does not appear to have sold his own stores in a single instance until the beginning of the year 1798: and why he has done this subsequent to that period in the manner that has been described, it will now be incumbent upon me, general De Lancey not having been called by the attorney-general, to explain.

In the interval between the date of this agreement and the year 1798, that is from 1795 to 1798, the number of barracks in this country had considerably increased; the consequence of which was, a proportionate increase in the demand for the different articles of bedding in the market; owing to which general De Lancey found that he could not obtain a supply of these articles sufficiently extensive and sufficiently early to meet the wants of his department. And therefore, as general De Lancey will this day tell you, having come to an explanation with Mr. Davison upon that subject, towards the end of the year 1797, it was agreed between them that a most important change should be introduced into the agreement as it had stood up to that period; and that as, under the original agreement, Mr. Davison had been heretofore prohibited from supplying his own stores, so under a new agreement, of which you have heard nothing, he was not only permitted to supply his own stores, but was authorised so to do by the barrack-master-general. This agreement was entered into with general De Lancey at the

close of the year 1797; and its precise object was, that in the future execution of the public orders Mr. Davison should supply stores which belonged to himself.

Upon this important fact, gentlemen, observation follows observation so rapidly as to oppress the mind. Let us first consider what effect it produces upon the charge. The present information sets forth the first agreement only; it states the employment of Mr. Davison, and alleges the duty of that employment to be, to deliver only stores which he had purchased of others; it then states, that in the execution of these duties, and in breach of that agreement (*that agreement being made, in the information, the whole foundation of the charge,*) Mr. Davison had supplied his own stores, &c.

Proceeding, therefore, by steps, I shall in the first place, by calling general De Lancey, prove that this second agreement was engrafted upon the first, and that these stores were not supplied covertly and secretly, but with the knowledge and approbation of the barrack-master-general. I shall then submit that the situation in which Mr. Davison stood, with respect to the public, is not correctly described in this information, but that by the agreement of 1797, he was expressly employed for the double purpose of purchasing, when it should be necessary, the supplies from other dealers, and of selling, when he thought fit, his own goods to the public. And upon this part of the case, confining my observations at present to the manner in which the information is framed, I shall contend that upon this charge the present defendant must be acquitted; upon an objection, not of form merely, but of substance—upon an objection which involves the essential merits of the cause, inasmuch as he is charged by the information with becoming a dealer, instead of confining himself to the single capacity of an agent, prohibited from selling his own goods and restricted to the purchase of supplies from others, when it will turn out that that agreement was altered by the barrack-master-general, and that Mr. Davison was then permitted to furnish his own stores in execution of the public orders. You have not heard from my learned friend the slightest hint of any subsequent agreement taking place, and therefore, when I shall have proved by the testimony of general De Lancey, the existence of this second agreement, I shall submit that, for the reasons which I have already stated and which it would be superfluous to repeat, this information must be abandoned.

You will observe that this material change in the manner in which Mr. Davison was to deal with the public, alters the whole cast and complexion of the case. Before I consider how it affects the question as to his being entitled to receive the commission, you will permit me to remark that nothing turns upon the *policy or expediency of this agreement*. It has been said by the attorney-general, that

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if Mr. Davison was to sell his own stores, he would of course sell them as dearly as possible, the effect of which, would be, that in order to make the prices of the other dealers tally with his own, he would enhance the price even of articles which were purchased of them for the public service. I will distinctly prove that the direct reverse has happened upon the present occasion; and even if I were for the sake of argument to admit that such was the inevitable effect of this agreement, still we are not now met to enquire whether this was an advantageous agreement for the barrack-master-general to make, but whether he, acting for the public, had the power to make it. General De Lancey, however, will explain his reasons for entering into this agreement with Mr. Davison, and will show that it was an agreement not only free from objection, but highly expedient and politic, and indeed, necessary, under the circumstances of the public wants, and that if this agreement with Mr. Davison had not at that time been made, it would have been impossible for him to provide the troops in barracks, with bedding and the other requisite articles. If therefore, the question were (which it is not) whether this agreement was proper and expedient, it must be answered in the affirmative.

Assuming that this agreement was entered into, the next question will be, what was its operation and effect?

The first observation which naturally arises is, that it altogether destroys all that has been alleged with regard to criminality; for it is perfectly impossible that you can have forgotten that the fraudulent practice charged upon Mr. Davison, by the attorney-general, was, that not being authorised to sell his own stores to the public, he nevertheless, did sell them under the name of another person. If, then, I prove to you, not only, that he had the authority of the barrack-master-general, the very person whom by this information he is charged with deceiving, but also, that he was applied to and expressly appointed by the barrack-master to supply his own stores, as being the only way in which the public business of that department could be carried on; the very foundation upon which this prosecution rests, is removed, namely, that he engaged in a covert and clandestine traffic contrary to the express provisions of his contract. For I shall prove, that at the close of the year 1797, and before any one of the transactions, which are upon the present occasion picked out of these multifarious dealings as being liable to imputation, took place,—a change in their mode of dealing had been agreed upon by general De Lancey (acting on the part of the public,) and Mr. Davison, in consequence of which, he was thenceforward to supply in every instance in which he thought fit (he was to judge how far it was for the benefit of the public service,) and subject to certain checks which I shall describe, stores which belonged to himself.

I

But I should tell you that this was not merely an agreement, entered into by general De Lancey but not acted upon at the time; for that gentleman will tell you that the circumstances of the agreement were these. Towards the end of the year 1797 general De Lancey found it impossible, notwithstanding all the exertions of Mr. Davison who was employed jointly with himself for that purpose, to procure in the ordinary public market the various articles required for his department. At that time Mr. Davison carried on the business of an army clothier; it will be proved to you that in conducting this business he employed every week a number of not less than a thousand men. It being extremely important that the supply of the barrack department should go on regularly and punctually, and general De Lancey having represented to Mr. Davison the necessity of a more regular supply, Mr. Davison offered to employ in making up the different articles of barrack bedding, the workmen engaged in the army clothing business in Bedford-street, and to supply these articles in future from his own stores. General De Lancey will also tell you that, by the positive and particular terms of the agreement, in order to guard against the possibility of any imposition being practised upon the public, before the supplies were furnished from his stores, Mr. Davison was, in every instance, to send a pattern and the price to the barrack office; and that the barrack-master-general, looking at the sample and at the price and comparing them with the quality and price of similar articles furnished by other persons, was to accept or reject these particular articles, as he might determine. General De Lancey will tell you that this mode of dealing was open, public, and notorious; that it was not adopted in a few instances only; but was carried on during the whole period in which these accounts are stated to have been delivered. He will tell you, that the patterns and the prices were invariably sent; that it was a matter of public notoriety that Mr. Davison was selling from his own stores; and (which puts an end to the present prosecution) that this was in consequence of a new agreement which he (general De Lancey) at the time I have mentioned, entered into with Mr. Davison. Now it really does appear to me that after having made this statement, after having attended to the manner in which this case has been opened on the part of the crown, and at the same time to the way in which the charge is drawn out upon the face of the information, even if I stopped short here, the defendant would be entitled to a verdict of acquittal.

Lord *Ellenborough*.—Will it interrupt the course of your argument if you are desired to advert, either now or at some other time before you conclude, to the answer given by Mr. Davison to the sixth question of the commissioners of military enquiry? That question is *Was there any other agreement, or any thing*

*in the nature of an agreement, between you and the barrack-master-general, than what is contained in the barrack-master-general's letter to you of the 28th December 1794, and your answer of the 10th January 1795?*" Mr. Davison's answer is, "*There was no other agreement.*" As you will not have another opportunity of removing from my mind or from the minds of the jury any impression which this answer may have created, you will advert to it before you sit down.

Mr. *Dallas*.—Gentlemen of the jury, I was stating, that towards the close of the year 1797, Mr. Davison was authorised by general De Lancey from that period to supply his own stores. Under what circumstances that authority was given you will hear from the general himself. I think it can scarcely be insinuated, nor indeed can such a supposition arise in the mind of any person whatever, that when that honourable person comes forward this day as a witness, and not only distinctly tells you that such an agreement was made, but also states all the circumstances attending the making of it, and when these are combined with the other circumstances of the case to which I shall presently request your attention, I say, doubt can never be insinuated of the fact that this particular agreement was entered into at the period I mention. And assuming for the present what I must undoubtedly prove hereafter, namely the existence of such agreement and that the observations I have made are well founded, it is equally clear that it at once destroys the case on the part of the crown.

Our next enquiry is, whether Mr. Davison was entitled to commission upon the stores which he himself manufactured and sold to the barrack department, as well as upon those which as agent he purchased from other dealers for the use of the same department. The fraud imputed to Mr. Davison is the having obtained commission to which he was not entitled, upon supplies furnished in a manner prohibited by the agreement. If I prove that in point of fact he was entitled to this commission or that he had reasonable and probable cause for believing that he was entitled to it, then it matters not what means may have been made use of to obtain it; the fictitious bills of parcels are only stated in the information as the means whereby the commission was obtained, and if he was entitled to that any observations as to the means of obtaining it are superfluous and irrelevant to the charge. The only question therefore is whether, by an equitable construction of both the agreements, Mr. Davison was not entitled to commission as well upon the stores sold by himself as upon those which he procured from other persons.

Before entering upon the discussion of this subject I must beg to remind you that we are not now enquiring as to the right to commission; this is not an information filed by Mr.

Attorney-general in the court of Exchequer for the recovery of the commission, on the ground that Mr. Davison was not entitled to it, but this is an information charging Mr. Davison with a fraud in obtaining that commission. Now no two things can be more different than a claim which is merely unfounded and a claim which is fraudulent. All civil litigation is but controverted right; in every civil suit that is brought to trial one man sets up a claim which another resists, and in the result it must be found that the claim or the resistance was unjust; but it would be absurd to say that because the claim should be found to be unjust it must therefore be found to be fraudulent. This case, therefore, is not one in which you must decide against the defendant upon the same grounds upon which you would decide against him in a civil action for the commission. A civil action would not touch upon that which is the main ingredient in a criminal prosecution, viz. whether the claim was known by him when he made it, to be without any reasonable or probable cause, and was therefore fraudulent.

You will bear in mind that the questions whether he was entitled to commission, and whether, if he was not entitled to it, the demand of it was fraudulent, are perfectly distinct. If upon a full consideration of these two agreements you shall be of opinion that Mr. Davison was fairly entitled to commission as well upon what he himself sold as upon what he purchased as agent from other dealers, then this charge cannot be supported, because his profit was a due profit and the charge is, that he obtained an undue profit. If, however, you should be doubtful upon this point, the other question presents itself for consideration, viz. whether, under all the circumstances, this was a claim made so completely without any colour of right that you must infer, from the bare fact of the claim having been preferred by him, that it was fraudulent.

Was Mr. Davison being employed in a double capacity, i. e. being employed to purchase stores of others, and also to sell the like stores from his own stock, for the use of the public, entitled to commission in the latter case as well as in the former? that is the first question for your consideration: and the argument on the other side must be pushed to this extent, that if Mr. Davison, being authorised to purchase the barrack stores from others or to sell them himself, and being left to exercise his own discretion as to how much he would purchase and how much he would sell (which I shall undoubtedly prove), in the execution of this agreement, were to enter a tradesman's shop and purchase certain articles he would be entitled to commission, but that if he were to supply the like articles from his own shop, next door to this tradesman's, he would not be entitled to commission.

The attorney general says that Mr. Davison was employed merely as an agent upon commission, and that an agent cannot at the same

time be entitled to commission and to profit. It is not necessary that I should, upon the present occasion, examine this minutely: but I deny the proposition to be universally true; and I doubt not that there must be within your own knowledge many instances in which the business cannot be otherwise transacted than by the agent to whom the order is given, himself supplying the article required, and deriving at once a profit and a commission. Our present enquiry, however, turns upon the construction of the particular agreement: and I readily admit that Mr. Davison bound himself by the agreement of 1795 to derive no emolument whatever except his commission upon each particular dealing; and so it remained until the end of the year 1797 when the new agreement was entered into. It is not necessary to consider whether a mere common agent in the execution of an ordinary agency may be at once entitled to a profit and to a commission; I must protest against any comparison being instituted between the employment of a common agent and the bargain made by the barrack-master-general with the defendant. A common agent is merely employed to buy; and I have admitted that, in the execution of a simple order to buy, it would be a fraud on the part of the agent, if without any necessity which could justify the deviation, he were to sell stores under the name of another man which really belonged to himself. I admit that that would be a fraud on the part of such a person as a mere agent. But the case of a common agent differs from the case of Mr. Davison in this respect, the common agent is not at liberty to sell his own goods to his employer, but Mr. Davison under his contract with the barrack-master-general was authorised not only to buy of others but also to sell his own manufactures. It becomes therefore a case of a mixed nature; in which the second agreement was engrafted upon the first for the express purpose of correcting those evils which must have continued to embarrass the public service if Mr. Davison had not been empowered to sell his own stores to the barrack department. And when a man is acting under two agreements, by the former of which he is exclusively to provide stores by purchasing them from others, and by the latter of which he may in the execution of any particular order furnish them in such proportion as he may think fit, from his own stock, is he not entitled under this double employment to his commission as well upon what he sells himself as upon what he procures elsewhere?

The decision upon this point depends upon the nature of the employment and upon the acquiescence of the principal; for it cannot be necessary to remind you that there is a great variety of cases in which, with the acquiescence of the principal the same person is at once acting as agent and seller and is receiving a commission and a profit. One instance immediately occurs to me which will serve to explain what I mean; it is an instance

of considerable importance because it perpetually arises in those great commercial cases which are tried before his lordship at Guildhall, I mean actions on policies of insurance. In all such cases the principal is the party who is insured, the underwriter is the person who makes the insurance, and the broker is the agent or middle man. The principal therefore is, if I may so express myself, the person who wants to buy an indemnity against his risk; the underwriter is the seller, i. e. the person who sells him that indemnity; and the broker is the agent or middle man through whose intervention the bargain and sale is concluded. It is impossible that you can be strangers to the fact that there is no considerable broker in the city of London to whom orders for effecting insurances are addressed, who is not at the same time a considerable underwriter; and indeed who does not appear upon the policy as the underwriter. As broker he obtains his agency commission, and as underwriter (in the execution of his own order as agent) he derives a seller's profit in the premium which is paid for his guarantee against the risk. It is not true, therefore, that there are no transactions in which, even under the eye of a court of justice, the same person perpetually appears in the joint character of agent and seller.

But there is another point of view in which this case should be considered: here Mr. Davison received extensive buying orders; the market was not sufficient to supply them, and in consequence of that insufficiency the labour of the persons whom he employed in a different manufactory was to be converted to the purpose of supplying the barrack stores. Under these circumstances was he or not entitled to commission? Let us first examine how the case would stand independently of any express stipulation for the purpose. If one man employs another as agent whom he knew to be at the same time a considerable dealer in the commodity which he is employed as agent to purchase, it would be absurd to allege that it could possibly be contemplated by the employer that the agent should not supply him from his own storehouse, and for the plainest of all reasons; it being known to the employer that he was the principal dealer in the commodity; the effect otherwise would be, that the agent must purchase from other dealers, excluding his own stores from the market; an artificial scarcity would be created by his own stores being withheld, and thus the price of the commodity in the market would be raised. It is impossible, therefore, not to see, that if any person is employed as an agent to procure particular articles in which he is known to be a considerable dealer, it is in the nature of things that he should supply his employer from his own storehouse. Now this was the situation of Mr. Davison; upon the application of general De Lancey, he was to become the manufacturer of the particular articles for the express purpose of supplying

them to the barrack department in the execution of a public contract. And then the question will be, whether the first agreement being connected with the other, Mr. Davison was not equally entitled to commission upon both.

"The defence in this case," said my learned friend, "will probably be, that the public do not suffer." *The public do not suffer*; because if Mr. Davison had not sold the stores himself, he must have bought them of others, and then he must have received his commission. The way of executing the public contract to which Mr. Davison is to be reduced, is assuredly most extraordinary; receiving an extensive order to procure certain goods, and having himself, with the knowledge of the barrack-master-general, the means of supplying the goods so ordered, he is not to furnish them himself, but is to go round to all the other dealers in the same line of business, in which case it is admitted on all sides that the public must have paid commission upon all the goods which were wanted.

I do not, however, mean to rest my defence upon the ground that no difference resulted to the public; and, in fact, none did; for if he had not himself sold, he must have purchased from others to the same extent, and it is admitted that, if he had done so, commission must have been paid, so that eventually the public has sustained no injury. But, it has been said, that the injury to the public consists in this, that being himself a seller he had an interest to put as high a price as he could upon his supplies and to make his own high charges the standard for the charges of the tradesmen of whom he purchased similar stores in his character of agent. That is a supposition which will be negated by the evidence that I shall call: For I will prove that whenever a purchase was made by Mr. Davison as agent, the articles were bought for the public ten per cent cheaper than they were furnished by any individual merchant; and I will prove beyond the possibility of contradiction that instead of putting an high price upon his own articles, these were actually sold to the public at two or two and an half per cent cheaper than those furnished by any other person. The public therefore sustained no loss. All this, however, was matter for the consideration of general De Lancey; for if general De Lancey thought fit to permit Mr. Davison to be the seller, it was for general De Lancey to interpose such checks as his duty to the crown required him to interpose; he stipulated that Mr. Davison should send his prices and patterns, that the quality and value of the articles might be judged of; and the articles themselves were not sent until the barrack-master-general thought fit, on behalf of the public, to conclude the purchase. Mr. Davison, therefore, was not simply in the single capacity of an agent, and hence the general doctrine of agency does not apply.

Upon the objection that he was not entitled to commission upon what he sold as well as

upon what he bought, I shall first observe that it is necessary to consider with what view this change in the original agreement was made. I admit that if it was with a view to a public saving of the charge of commission, it would have been a deceitful execution of the agreement, to have sold in the name of another man and to have charged the commission. But the saving the commission was not the object which induced general De Lancey to enter into the second agreement; his sole inducement was, that he might draw into the market, articles which, but for that agreement, might not be found there, and that the supplies might be furnished with regularity and dispatch: and the first agreement still remaining in force as to all its material provisions, it will distinctly appear in proof, that no explanation upon this point took place, much less any prohibition of Mr. Davison's continuing to charge commission as before.

Consider for a moment what were the provisions of the original agreement in 1795, under that he was, as I have stated, only to purchase of others. I admit, therefore, that in 1795 Mr. Davison was bound to exercise all the skill, knowledge, and acuteness of a man of business, in order to make, in every case, the best bargain he possibly could for the public; he was to go into the market, and get the best possible articles at the lowest possible price. But afterwards, when he is himself permitted to sell, is it not obvious that the continuation of the provisions of the former agreement must operate to his disadvantage, if you are to separate his characters and to suppose that the first agreement prevents his being considered as agent in those instances in which he himself sells, and that he therefore is not entitled to commission even in the execution of one and the same order. Consider what the situation of this gentleman then was. He was to buy from others as well as to sell articles manufactured by himself: when buying from others, he was to make the best bargain he could for the public, and in selling his own commodity he must make the market price his rule of charge. From the nature of the dealings the two characters are blended. His purchases as agent operate upon his dealings as seller of his own commodity at the market price, because the market price is regulated by his dealings with those persons from whom he purchases as agent.

Now, gentlemen, I ask you (and your minds will instantly suggest the answer) is that the common case of a seller? A seller is entitled to make the best bargain he can for himself, by the exercise of his utmost skill and ingenuity; he is not bound to reduce the market price; he is not bound to attend to the punctuality of the supply; every common seller may speculate upon the quantity in the market, and is not bound to bring his commodities to sale but at such times as he thinks fit. When Mr. Davison was selling his own commodities, the market price was his rule of

charge, at the same time that he was exercising his skill in making the best bargain he could on the part of the public in his agency purchases; and, therefore, upon a just and equitable construction of these two agreements, when taken together, you will find that this was not the simple case of a mere agent to buy from others and who has nothing to do but to buy as cheap as he can; in the present case Mr. Davison was to reduce the market price as much as he could, which reduction operated upon those commodities which he sold, and therefore the public received the full benefit of the performance of those duties which belonged to his character of agent. Under these circumstances, then, can this be said to be a fraudulent claim? I know of no such case having occurred before; it is a question of magnitude and of novelty, and even in the most unfavourable view which can be taken of it, it is subject to considerable doubt. If this were the trial of a civil right and not an inquiry into a proceeding alleged to be criminal I should confidently contend that Mr. Davison had a right to retain his commission as well upon what he sold as upon what he procured by purchase from other dealers.

Suffer me, gentlemen, again to draw your attention to the provisions of the original agreement. If Mr. Davison is to be considered, under the second agreement, as a seller merely, each sale would be a distinct transaction ending with itself, he would be at liberty to make the best bargain he could, not being bound to do more. But you find that under the first agreement he was to superintend the distribution of the supplies; he was to employ packers; he was to receive from the packers weekly returns of all the different articles sent; he was to forward them to the different barracks; he was responsible for their delivery; and if the articles sent were not good he was to take them upon himself; all these were provisions under the first agreement, and they continued in operation under the second which authorized him to sell as well as to buy. Had he been a *mere seller*, each transaction would have ended with the delivery of the goods, and he would not have had to send them to the barracks, nor would he have been responsible for their delivery. All these provisions of the first agreement operated and were performed by him under the second; and I therefore submit that his case is not that of a common agent employed to buy and not authorized himself to sell; neither is it the case of a common seller employed to sell and not to buy; because the commission is a compensation, not confined merely to the art of buying, but was extended to every thing which was afterwards to be done with the article bought, from the time of its quitting the shop where it was bought until it was deposited in the barracks for consumption. Taking, therefore, the two agreements together if the question now were as to the mere right to commission, I should con-



tend that Mr. Davison was entitled to the commission charged; but, for the reasons which I before stated, I am sure you will not overlook, in the consideration of this subject, the circumstance that the present inquiry is not whether he is entitled to it, but whether, under the circumstances I have stated, acting with the knowledge of general De Lancey, furnishing those supplies, and charging commission upon them, there was such a distinction between what he supplied by purchases from other dealers and what he supplied by sales from his own stores, as to entitle him to the commission in the one case and to deprive him of it in the other.

It is said, however (and this is, no doubt a material part of the charge), that Mr. Davison delivered in fictitious bills of parcels; that those bills of parcels were followed up by fictitious receipts; and that instead of being drawn up in his own name they were uniformly drawn up in the names of two persons who turn out to have been clerks in his office; and, according to the evidence, Mr. Davison has been proved to have been in the habit of doing this for a period of not less than nearly four years. You must always attend to this circumstance, for I must not lose sight of it in the consideration of this part of the case, it is the point on which the whole of this question turns, that there is no instance whatever, until after the second agreement, of Mr. Davison having delivered in any bill of parcels of goods sold by himself in the name of another.

But it is said the bills were uniformly delivered in the names of these clerks, and therefore it was a fraudulent proceeding. In the first place I would observe as I go along—and I do it merely for the sake of argument—that if I were for a moment to concede that it was an unnecessary course of proceeding—if I were to go further and allow that it was—nay, if I were to go the utmost length and agree to what has been said of it, namely, that it was a fraudulent proceeding—still, unless you are of opinion that Mr. Davison was not entitled to the commission, all this is immaterial: for if, upon the true construction of these agreements, he was entitled to the commission, this charge is at an end, because the charge is, that this commission was an undue profit obtained by him, and if this commission was his due, the charge falls to the ground, and whether the means by which it was obtained were improper or fraudulent are questions altogether irrelevant.

Let us next enquire what this uniform line of conduct has been which is now impeached by the attorney-general on the ground of fraud. It is said that some of these bills of parcels and receipts were delivered in the name of Watson and some in the name of Allen. You have heard that in this warehouse where Mr. Davison's trade was carried on there was a person of the name of Shedden, who unfortunately died three or four days be-

fore the day on which this case was to have been tried in the summer, there was also a person of the name of Bowring and two others of the names of Watson and Allen. Now, if Mr. Davison meant to act fraudulently, he must have been more off his guard than any man I ever met with who had a fraudulent purpose. A fraud is not that which a man commits in a crowd with the eyes of every person around him directed to his conduct; yet the case set up on the part of the prosecution is, that Mr. Davison, carrying on these extensive concerns, and holding that rank in society which he had obtained by the exercise of his industry and talents through a long life, has been such a driveller and ideot, as, with the knowledge of the lowest clerk in his office, to commit a fraud, by exposing which any one of his clerks might the next day have effected his ruin! Is that the way in which men who meditate a fraud generally go to work? When, therefore, the question has been put to-day, who were clerks in the office, and how was the business carried on; and when you find that all this imputed contrivance was executed with the knowledge of Shedden, Watson, and two other persons, I hope it is not improper to observe, that this is a most material circumstance, and that such is not the mode in which a man who has resolved upon the commission of a fraud would carry it into execution. Do you think it probable that any merchant in London, if he were fabricating accounts for a fraudulent purpose, would do so with the knowledge and by the assistance of all the clerks in his office, and without any attempt to impose secrecy upon any of them, so that either of them might have stepped forward, disclosed it instantly, and effected the ruin of his employer? The thing is impossible. From the publicity with which these accounts were manufactured, there could not have been in the minds of the parties who were privy to the transaction and still less in the mind of Mr. Davison any criminal intention whatever.

But, you may naturally ask, why was this done? How did it happen that Mr. Davison, who was not only permitted but invited to sell his own stores, should not have delivered bills of parcels in his own name? I will tell you how this conduct is satisfactorily explained. Mr. Bowring, who managed the business for Mr. Davison, will tell you that immediately after the second agreement between general De Lancey and Mr. Davison was entered into, he necessarily became acquainted with it from the circumstance that the work people who had been theretofore employed in the business of army clothiers were from that period employed in the execution of barrack contracts. And when the first half-year had elapsed and it became necessary to make out the accounts of that period, it occurred to Bowring (without any communication whatever with Mr. Davison) that there would be an impropriety in deliver-

ing a bill of parcels in which Alexander Davison should be made debtor to Alexander Davison; it occurred to him that by the provisions of the first agreement it was required that the bills of parcels should be made out in the names of the seller and of the purchaser, and that Mr. Davison (being with the knowledge of the barrack-master-general, the seller as well as the buyer) could not appear as the creditor and give a receipt to himself; Mr. Bowring, therefore, being at a loss how to draw out the account, and not having received from Mr. Davison any directions upon the subject, suggested this difficulty to Mr. Davison, saying that this was an improper way of drawing up the account, and that it must be made out in some other way. Mr. Davison agreed with Mr. Bowring's suggestion that this would not be in compliance with the forms of the office and with the stipulations of the first agreement, and it was thereupon settled that the bills of parcels should be made out in the names of these clerks and the receipts given by them, because they being privy to the delivery of the particular articles and to the cost of them could best ascertain the dates of delivery and the cost of such articles.

Here again I must beg leave to remark that upon this important part of the case there are two distinct questions for your consideration. First, whether this was necessary or expedient? As to this I have given you the explanation which you will hereafter hear more fully from Bowring himself, and upon which you will judge for yourselves. But the more important question remains behind: namely, whether any fraudulent purpose could be answered by this course of proceeding. Or, in other words, whether it was a contrivance resorted to by Mr. Davison and executed in his office, in order, as the information charges, to obtain the commission to which he was not entitled. I own I am at a loss to conceive in the fair and just consideration of this question, what manner of fraud could be effected by drawing up the accounts in this particular way. If you suppose a fraudulent purpose, it must have been either merely to conceal the fact that Mr. Davison was supplying his own stores—that he was himself the seller, or to conceal that fact for the purpose of receiving commission upon what he had so supplied, *i. e.* that upon the face of these accounts he should not appear to be the seller; for, when I shall have proved that by the general agreement with general De Lancey he was empowered to sell—that he was, almost every hour of the day, sending patterns and prices to the barrack-office—that the agreement that he should sell his own stores was made because there was a scarcity in the public market—that the barrack-master-general had permitted Mr. Davison to sell from his own warehouse the most considerable part of what was furnished—when I shall have proved all this, can it be said that merely because he saw in the ac-

counts no entry under the name of Mr. Davison himself, general De Lancey could, six months after the second agreement had been made, have been ignorant that Mr. Davison was in fact the seller? The barrack-master-general will tell you, that he knew it and that he approved of it. The fact, therefore, that upon the face of the accounts delivered to the barrack-master-general, Mr. Davison did not appear to have furnished any articles belonging to himself, could not have deceived the barrack-master-general; because he must have observed that the name of Mr. Davison was not there, and, if he had not known the cause of its omission, he must have said, how happens it that you who have now become the most considerable seller, do not appear upon the face of these accounts to have sold a single article? That question would at once have led to a discovery, and it would then have appeared that the sales under the name of Watson were, in fact, sales by Mr. Davison.

You will, in justice to the defendant, look at these accounts before you draw that conclusion which my learned friend presses upon you this day: and you will find that the greatest proportion of the supplies included in the account for the first six months came from Mr. Davison's stores; and yet, in a case where it is alleged that all this was fraudulently contrived to conceal from the knowledge of the barrack-master-general the circumstances of that supply which in part the barrack-master-general himself was privy to—you are called upon to believe that it was intended to conceal this fact from general De Lancey for the purpose of entitling Mr. Davison to the commission, when the commission stands charged upon the very face of the account delivered in for the purpose of being examined and audited; there is that upon the face of the account which must have shown that Mr. Davison was charging commission upon his own supplies; because he had supplied the greatest part himself, and the commission was charged upon the whole, that fact therefore was at that time noticed to the barrack-office that he was charging commission upon what he sold himself, as well as upon those supplies which were purchased of others; and yet this is the fraud which you are called upon to believe that Mr. Davison contemplated, and which is to be the ground of your convicting him of this charge: in other words, when you shall be told that the barrack-master-general knew of these supplies, when you shall be told that they formed a considerable part of the account delivered in for the six months succeeding the agreement, and when you shall be told that upon the sum total of these supplies, commission was charged without any distinction between what he sold and what he bought, you are to be called upon to say, that this passed without notice, that a course of proceeding of this sort, adopted for the execution of a fraudulent purpose, could have excited no obser-

vation, and that no inquiry into it could have been made. Not to dwell longer upon this part of the case—I have told you how the idea, that it was necessary to make out the accounts in this particular way, originated. Whether that be right or wrong, still upon the question of fraudulent intention, I submit that it was impossible that such could have been the intention. General De Lancey knew that Mr. Davison was, under his authority, making these supplies from his own stores; this supply was authorized; Mr. Davison was employed not merely to buy but also to sell; and in all the accounts delivered in subsequent to the second agreement, no distinction was made between what was sold and what was purchased, commission was charged upon both without distinction, and therefore I submit that it is impossible to suppose that this mode of stating the accounts could have been adopted for any fraudulent purpose.

Thus the accounts in question went on until the year 1802; and the business having in the mean time considerably increased and having become very extensive, it occurred to Bowring that whether Mr. Davison was or was not, strictly speaking, entitled to commission, yet that under the then circumstances of the case it might be most expedient for Mr. Davison not to insert that charge, and therefore, as he will tell you, in 1802 he suggested to Mr. Davison the propriety of discontinuing the charge of commission in future. This circumstance will be most material for your consideration, and I will tell you why. In the year 1802, the conversation between Bowring and Mr. Davison upon this subject took place, and the result of it was, that Mr. Davison consented to give up this charge to the public; and Bowring will tell you that Mr. Davison directed him to apply to the barrack-office for the express purpose of getting back the former accounts, that the charge of commission might be deducted from them also. Now the way in which that is represented on the part of the crown I understand to be this—that Mr. Davison, after some time, intimated that this was a mistake; and, to be sure, if it had been a mistake, and if an intimation of it had been given—

*Mr. Attorney-General.*—I wish my learned friend not to misunderstand me, I never said that at the period of which he is now speaking, Mr. Davison represented it as a mistake.

*Mr. Dallas.*—My learned friend supposed I misunderstood him, in stating that he had said that in 1802, Mr. Davison intimated that it was a mistake: I certainly did not understand him to state any such thing, and must have misunderstood him most grossly if I had; but, gentlemen, I will tell you what I did understand my learned friend to state.

Mr. Davison intimated that it was a mistake; so far I go without any reference to the time, which, however, is undoubtedly a most important point in this case—because, assum-

ing, for the purpose of argument only, that this charge was, in the first instance, made upon an erroneous notion of a right to it, the person making the charge (the same dealings with the public still continuing) applies for the purpose of correcting the charge, and this he does before any inquiry into it has been instituted—I think that no man will say he ought to be convicted upon any presumption which can be drawn from his having done so.

But I understood my learned friend to insinuate that this idea originated subsequently to the inquiries which had taken place in 1805 and 1806, and that it must, therefore, be attributed to a dread of detection in consequence of these inquiries, and, therefore, that Mr. Davison could not be supposed to stand in the same situation in which he would have stood if he had desired to correct the account before the commencement of these inquiries and before the filing this information. Then, was it or was it not in 1805 or 1806, that Mr. Davison, for the first time, putting this upon the footing of an erroneous charge, desired to deduct it upon the accounts already delivered to the barrack-office? That is a question of fact, with respect to which my learned friend the attorney-general and myself are at issue. I admit to him, that if it had been subsequent to the institution of an inquiry which might lead to a detection, it might have arisen from a suspicion on the part of the defendant that such inquiry would lead to detection; but if in point of fact the converse of this should appear to have been the case, and if he made the disclosure and sought to rectify the error, by treating it as such (though I deny that originally it was an error), long before the inquiry was set on foot, then the disclosure is not got rid of in the way in which Mr. Attorney-general would dispose of it, i. e. by attributing it to a dread of detection.

I will convince you by absolute demonstration, that long before the institution of any inquiry, Mr. Davison had applied at the barrack-office for the very purpose of getting back the accounts in order to strike out the commission. The inquiry was instituted in 1805, and afterwards prosecuted in 1806; Bowring will tell you that in consequence of a conversation he held with Mr. Davison in 1802, Mr. Davison thinking that he was entitled to commission and Mr. Bowring not thinking that he was not entitled to commission, but (considering the extent of his dealings) that it might be as well to drop the charge in future and to refund the commission already received, he (Bowring) suggested the propriety of doing so to Mr. Davison; upon which Mr. Davison immediately consented to make the alteration, and for this very purpose an application was actually made to the barrack-office to get back these accounts in order that the commission might be deducted upon the face of them; that it might be stated as an error in the account; and that Mr. Davison might not retain the money in his own

pocket. This evidence Mr. Bowring will give; but I shall also call Mr. Stanbank who had the actual care and investigation of these accounts, and who will tell you that he perfectly recollects an application being made by Bowring in 1802, to get back the accounts that had been delivered in and settled.

The only object, of course, in getting back the accounts, must have been, to make an alteration, and any alteration in the charge of commission would appear upon the face of the accounts; if, therefore, they had been delivered by Mr. Stanbank, and had been returned altered by Bowring, then there could have been no foundation for the present prosecution. Mr. Stanbank will tell you, that he recollects that application being made by Mr. Bowring in 1802; there is therefore in 1802 a consent by Mr. Davison to give up the charge of commission, and an application to the barrack-office to return the accounts; and consequently this is not referable to the dread of that detection which was not until three years afterwards likely to take place. This explains why Mr. Davison, in 1802, consented to treat it as an erroneous charge, and why the alteration took place in the subsequent accounts. It appears that few supplies were made from 1802 to the middle of 1803; but from 1803 to 1805 he continues constantly supplying (with the knowledge of every person) the barrack-office stores from his own factory; for the accounts were made out, Davison Dr. to Bedford-street warehouse; the fact was perfectly well known, and the accounts were not made out Davison Dr. to himself, but Davison Dr. to Bedford-street warehouse, and the receipt is given by Shedden. These are the circumstances of explanation which belong to this part of the case.

The defence, therefore, as far as I have hitherto developed it, will undoubtedly, in the first place, consist in proving, that the case does not stand merely upon the first agreement, but upon the second agreement, taken jointly with the first. Before quitting this part of the case, now that the defence has been so far disclosed to you, I will direct your attention to one objection, which is not one merely of form, but of substance. The information sets forth the contract under which Mr. Davison was employed, the offence charged is a breach of that particular contract, and the specific allegation is, that in the exercise of his employment as agent, being entitled to a commission of two and a half per cent upon the amount of his purchases, he actually sold stores belonging to himself, and charged a commission upon them, so that, besides the commission, he received the selling price. But the information charges the profit to Mr. Davison as a merchant, as the fraud, and that that commission was to be the sole advantage he was to derive from his agency.

You will find, that the two and a half per cent was not to be the emolument solely for making the purchases; but there were other

parts of the transaction which would apply as well to what he sold as to what he bought. He says, "I consider a commission of two and a half per cent, upon the whole amount (including all per centages upon making insurances, recovering losses, averages, &c. and replacing all damaged or unserviceable articles, &c. delivered to barracks within Great Britain), to be what, I trust, you will allow, upon due reflection, but a just and reasonable compensation for executing the business," so that the two and a half per cent was not merely a compensation for making the purchases, but it also included a variety of other particulars.

My objection, then, is, that this information does not truly set out the contract, for it sets out the first agreement and omits the second, and charges a fraudulent conduct, which it alleges to be a dealing under, and a breach of the first agreement; whereas it will turn out to be a dealing under the second agreement taken together with the first. This, therefore, is an objection which affects the substantial merits of the case.

I have now, gentlemen, gone through all the observations which it has occurred to me to make upon the case which has been proved upon the part of the crown, and have opened the general nature of Mr. Davison's defence against these charges. Before I conclude, I will shortly advert to a question to which his lordship was so good as to direct my attention, as I shall not have an opportunity of again addressing you. I allude to the sixth question put to Mr. Davison by the military commissioners—"Was there any other agreement, or any thing in the nature of an agreement, between you and the barrack-master-general, than what is contained in the barrack-master-general's letter to you of the 28th December, 1794, and your answer of the 10th January, 1795?"—You will observe, that this is in the beginning of the examination; that examination refers to the agreement then under consideration, and the employment of Mr. Davison under that agreement. Mr. Davison's answer is, "There was no other agreement." Now, with respect to there being no other agreement, unless general De Lancey, who has no interest whatever in this question, should come forward this day to commit one of the most gross and premeditated perjuries ever hazarded in a court of justice, there will be no doubt of a subsequent agreement having been concluded between Mr. Davison and general De Lancey.

Having already troubled you so much at length, I shall not enter upon any minute recapitulation of my arguments, but merely draw your attention to the general points of defence.

First, I submit that the present charge is founded upon the first, and not upon the second agreement; I admit that unless a charge had been introduced by the second agreement, his conduct in the instances stated would have been improper, but I assert that under the

agreement of 1797 he was authorized to sell his own stores.

*Secondly*, I submit that, being authorized to sell his own stores, there were imposed upon him other duties, to which he would not have been liable as mere seller, and for which, if he had not received the commission, he would have had no compensation whatever. He was to take care, that the supplies were equal to the demand, to take care that the articles were properly and safely forwarded to the different barracks, to make insurances, &c., duties to which, as a mere seller, he would not have been liable, but which he had performed under the former agreement, and which former agreement entitled him to the commission for agency.

*Thirdly*, If, unfortunately, you should be of opinion (I trust you will not) that, in an equitable view of the circumstances of the case, the commission ought not to have been charged, still, it is impossible to conceive that it was charged by wilful fraud, i. e. that Mr. Davison was at the time conscious that he was not entitled to it.

*Lastly*. With respect to the accounts, I have stated the circumstances under which they were made out, and I deny that the existence of any fraudulent intention can be inferred from conducting the business in that way, because any man who took these accounts in his hand must have known that all the supplies on which this commission was charged, were constituted, as well of what was sold by himself, as of what was sold by others.

This is a case of the last consequence to the defendant; I trust that, under all the circumstances of his situation, justly and humanely considered, you will have no doubt of his being clearly entitled to a verdict of acquittal. But, if you entertain the least particle of doubt upon any part of the case, you will follow the humane principle marked out by the attorney-general, and let the balance preponderate in favour of the accused, and give the defendant the benefit of that doubt.

#### EVIDENCE FOR THE DEFENDANT.

Lieut.-gen. *Olinier De Lancry* sworn.—Examined by Mr. *Wilson*.

I believe you were some time since barrack-master-general?—I was.

When were you appointed to that office?—In the year 1793.

How long did you continue in that office?—Until November, 1804.

In what manner was the supply of the barrack stores carried on, when you came into office?—It was conducted by the War-office, and in some measure, by the Ordnance.

In what way was the supply obtained by the War-office?—By persons employed by that office.

Were they agents or sellers?—I really cannot say, but I believe agents.

Do you know in what manner they were paid?—I do not.

You do not know what commission they had?—I do not.

After you had been some time in the office, did you find any inconvenience to the public, from that mode of obtaining the supply?—I did.

In what respect?—I found that the person, with whom the War-office contracted, considered it his duty to go no farther than to send the articles to some public conveyance; and when I expected the articles to have been at the barracks, I found in many instances, that they were still in the warehouses of the carriers in London.

Then their duty did not extend to the actual sending of the stores to the different barracks?—It did not.

Did you find any other inconvenience?—I did not.

Was that such an inconvenience as appeared to you to require alteration?—It was: government were very pressing for the use of the barracks; and unless the stores were regularly furnished, the barracks could not be used.

In consequence of this, did you, at the end of 1794 or the beginning of 1795, make any agreement with Mr. Davison?—I did.

There have been two letters read; a letter from you to Mr. Davison, and another from him to you: had you, previously to these letters being written, any private knowledge of Mr. Davison?—My only knowledge of Mr. Davison, arose from my meeting him at the several offices of the secretaries of state after the American war, where I found him executing business for government: and learning that he had executed it very much to the satisfaction of those who had employed him, I thought him a very proper person to be employed, both from his knowledge of government business, and from the circumstance of his having been employed by government.

Had you any private knowledge of, or connexion with him?—None whatever, no acquaintance whatsoever.

We understand that this agreement began to be executed in the beginning of 1795. Your letter to Mr. Davison is dated the 28th of December 1794, and Mr. Davison's answer, the 10th of January 1795?—As far as I recollect, those are the dates.

Immediately after this letter of Mr. Davison, of the 10th of January 1795, did Mr. Davison enter upon his office and supply the barracks with those stores?—He did.

From that time he was the agent, and the only person who did supply those stores to the barrack-office?—He was.

Do you recollect how long this went on, Mr. Davison acting merely as an agent sending different stores to the barrack-office, before any change took place?—I think a change took place at the beginning of the year 1798, as far as I recollect, something like a change.

Until that time, the beginning of the year

1798, Mr. Davison had acted merely as agent?—Merely as agent.

Had he executed that business faithfully and diligently, as far as you know?—Perfectly to my satisfaction.

At the end of 1797, or at the beginning of 1798, was there any extra demand for barrack stores?—The supply of barrack stores during the whole time I was barrack-master-general was very great; there was a great necessity for a supply, but in the year 1798 there was a necessity for a greater supply than usual; there were additional barracks built at that time, in consequence of which there was, of course, a necessity for increasing the supply; the original supply was for the effective number in the barracks; it became necessary also, that the articles which had been some time in the barracks should be cleaned; and in order to that, it was necessary that there should be a very great additional supply to replace those that might be taken out for the purpose of being cleaned.

Then, if I rightly understand you, besides the increased number of barracks which would require new stores, the stores in the old barracks were become dirty, and, I suppose, worn out in some degree, and they required a fresh supply to the old barracks, besides the supply of the stores to the new barracks?—Yes.

This occurred towards the beginning of 1798, I understand?—To the best of my recollection, it did.

Had you, before this, found that the supply could be easily obtained, after the order was given?—I never found that there had been any difficulty previous to that.

Mr. Davison had been able to obtain it, had he?—It always had been procured, and I never heard of any difficulty in procuring it.

In what manner was it signified to Mr. Davison that a supply of a particular article was wanted?—Generally a notification from the barrack-office, that the articles were required.

Was there always a regular written order?—Not always for the preparation of the article; there generally was for sending the article to the different barracks; but as to the general preparation of it, I received from government an intimation of the intention of providing barracks to a certain extent, and then I informed Mr. Davison of it, that he might be prepared, but without any formal order.

Without any formal order?—Yes.

There was a general intimation given to Mr. Davison some time before, that such and such articles would be wanted?—Yes.

Upon that intimation, you expected Mr. Davison to be prepared with those articles?—Certainly.

Was any written order for sending those articles down to the barracks given afterwards?—I think the course of office required that there should be such.

It was expected of him, that he should be prepared beforehand with a considerable quan-

tity, upon the supposition that it would probably be wanted?—I always understood so; I expected, from a verbal intimation, that he should be prepared.

Suppose it had happened that those articles were not wanted after they had been provided, where was the loss to fall?—I should hardly think that it could happen that the articles would not be wanted at a certain time; but until Mr. Davison had actually supplied the articles to the barracks he could not expect payment: they must remain on his hands till then.

And if they were never sent, they must always remain upon his hands?—Yes.

It was at Mr. Davison's risk that the articles were sent from London to the different barracks?—It was; and if they were disapproved at the barracks by the officer who was appointed to examine them (which was the barrack-master at the several barracks) he was bound to take them back at his own expense.

Did this happen in any instances?—I believe it did.

You stated that in the beginning of the year 1798, on account of the increased demand, a change took place; will you state what that change was, in the mode of supply?—It having been represented to me that there was a difficulty in getting the articles in the general market; and Mr. Davison having stated to me that, as an army clothier, he had an opportunity of supplying the articles from his own stores, I permitted him to do so; which was certainly a deviation from the original agreement.

Before that time, he never had done so?—I do not recollect that he ever had.

Had he ever, before that time, made to you any proposal or any request that he might be allowed to supply from his own stores?—I do not recollect that he ever did.

At what time did this change take place, when you gave Mr. Davison permission to supply from his own stores?—I think it was at the end of the year 1797, or the beginning of 1798.

After you had given Mr. Davison this direction, did he supply from his own stores?—He did: I understood so.

Was any thing said about the manner in which Mr. Davison was to make this supply? was any thing mentioned about patterns and prices?—Mr. Davison was directed to send to the barrack-office patterns of the different articles, with the prices affixed thereto, for inspection.

Did he so?—He did.

You were at the head of the office, and had many persons under you in that office?—A great many.

Was this change in the mode of supply known in the office? or was it not?—It was known in the office.

Can you say particularly to what gentleman it was known?—It was known to the person who had the management of the supplies, co-

Colonel Mackenzie; and to the person whom I employed in the inspection of the articles, Mr. Henry Castleman, the assistant-barrack-master-general.

These two gentlemen you particularly acquainted with it?—Yes, they assisted me in the inspection of the articles.

Did you show to them the bills of parcels and the patterns that Mr. Davison sent?—I showed them the patterns and the prices affixed thereto which Mr. Davison sent.

You showed them to those gentlemen?—Yes.

Colonel Mackenzie was at the head of that branch, I understand?—He was at the head of that branch.

Did he inspect the bills of parcels and the patterns, and compare them with the prices, and form a judgment, and give you his opinion?—There were no bills of parcels accompanying the patterns; they were sent in with the accounts at a subsequent period.

But colonel Mackenzie inspected the patterns and prices sent by Mr. Davison?—Yes, he did.

And, I suppose, gave his opinion upon them?—Of course.

Where is colonel Mackenzie now?—I do not know.

He is not in the barrack-office?—I fancy he is secretary to the new barrack board.

Do you happen to know whether he is in London or in England?—He is in England, I know, but where I cannot tell.

Where is Mr. Castleman?—He is dead.

You communicated these patterns and prices to Mr. Castleman?—Yes, he was particularly conversant in articles of that nature, and upon his judgment I relied very much.

In consequence of this new arrangement with Mr. Davison, was the supply at that time obtained?—I never heard of any instance of failure.

Was there an extraordinary quantity of barrack stores sent at that time to the different barracks?—I should think so.

And there was no disappointment at all?—No disappointment that I heard of.

Mr. Attorney-General.—They should show that from the returns.

Lord Ellenborough.—We have it at present upon the recollection of general De Lancey, that there was no want of supplies at that time.

Mr. Wilson.—If you wish to contradict general De Lancey, you may produce the returns; you have them, and we have them not; I think you said, to the best of your knowledge, Mr. Davison did supply, after this, from his own stores?—He did.

This agreement that had been entered into in the beginning of 1798 was meant, at the time, by you and by him, to be acted upon as an important alteration in the course of the office?

Mr. Attorney-General.—I do not think that can be so put; for general De Lancey himself expressed it, that there was, “something like a change.”

Mr. Wilson.—With respect to the agreement you have stated, by which Mr. Davison was to become the supplier from his own stores; at the time when you entered into that new agreement with him, did you mean that it should be acted upon, or that it should not be acted upon?—I meant that Mr. Davison was to supply from his own stores, and I considered that the principle of my letter of 1794 was to govern the transaction; that he was to supply from his own stores, was the only deviation from the original agreement.

There was no other alteration in any respect whatever?—Not that I know of; I do not recollect any.

No other alteration was mentioned?—No alteration was mentioned that I am aware of.

For the delivery to the barracks of what he supplied from his own stores he was to be answerable?—In the same manner, and to be governed in every respect as the former supplies.

The commission was charged by Mr. Davison upon the whole amount of all the supplies whether furnished by himself or by others?—So I have understood.

It was so upon the accounts that have been produced?—The accounts will show clearly how that was.

Upon what he supplied himself as well as upon what he purchased from others?—I have understood so.

Did this continue during the whole of the time that you were barrack-master-general?—I believe it did.

He continued to supply from his own stores, as well as to purchase from others?—For a considerable time he did; I cannot at this moment recollect the exact period when it ceased.

During the whole of this time, in what manner did Mr. Davison conduct himself with respect to the public?—I do not know whether I understand the nature of that question.

What I wish to ask is, whether he fulfilled his engagements, made his charges, and did every thing, fairly, properly, and with activity?—I consider Mr. Davison to have acted with very great energy, to have fulfilled all that was required of him, and to have acted fairly towards the public.

That was your opinion?—That was my opinion.

Had you ever any reason to believe that with respect either to the quality or to the prices or in any other respect, Mr. Davison had acted fraudulently towards the public?—I had no suspicion of any such thing.

From what you have formerly heard of him, and from your knowledge of him while you were barrack-master-general, do you think he was a person likely to commit a fraud?—Certainly if I had had that idea, I would not have employed him to the extent I did. I placed very great confidence in him: I had that confidence when I first employed him; and I saw no reason to deprive him of that confidence in any one instance, from any thing that passed. On the contrary, I do not think I should have been able to have executed the public business I was called upon to execute, unless I had had the assistance of a gentleman of the energy of Mr. Davison.

After all the knowledge you have had of him, do you think he is a person likely to commit a fraud?—I think not: and I still say that, were I to be employed again in the same situation, I then held, I should employ Mr. Davison, if he chose to undertake the same business again, from a perfect confidence that he would execute it with integrity.

Lieutenant-General *Olivier De Lancey* cross-examined by Mr. *Attorney General*.

I observe that, by the original agreement which you entered into with Mr. Davison, he was *always, previous to any purchase, to make you acquainted with the prices, and all other circumstances, to determine you with respect to the extent and true value thereof.*\* I take for granted, therefore, that previous to the purchases, you were made acquainted with the prices and other circumstances, to determine you?—Certainly, in most cases returns were sent in to the barrack office, of the prices of the different articles.

And as you could not judge of the price, without knowing the quality of the articles, it follows that patterns of the articles must have been sent?—In most cases they were.

Then, under the former agreement, from the commencement of the connexion between you and Mr. Davison, prices and patterns were to be sent to you, and were sent?—They were sent in many cases.

You stated, that early in 1798, you were informed that there was a scarcity of the articles in the market, and you were likewise informed that Mr. Davison was able, from his own stores in Bedford-street, to supply you?—I was.

I need not ask you, whether you were not informed of this by Mr. Davison?—I was informed by Mr. Davison; but I had made other inquiries.

I take for granted, in the course of those inquiries, you looked into the returns which had been made by Mr. Davison himself, in order to see what quantity he had in former years been able to purchase from others?—As I do not see the necessity of my having done so, I do not recollect having done it.

\* *Vide* the fourth paragraph of Mr. Davison's letter of January 10th, 1795, *antè* p. 119.

I will state the necessity; in order that you might see whether this was not a pretence: because, if in looking into the returns of former years, you found that Mr. Davison was able to procure large supplies from other persons, it might naturally have occurred to you, that this inability to procure supplies was a pretence: and when you had that account you might have applied to the former suppliers, to be informed whether they were incompetent to the continuance of their former supplies to government. You understand me general De Lancey? When Mr. Davison told you that he could supply you from Bedford-street, and that other people could not; it was natural that you should look into his returns, and see who had been accustomed to supply you, and that you then should have inquired of those persons whether they were able to continue their supply of the article or not?—I thought it was very immaterial who supplied the articles, provided they were supplied at as low a price.

Do you think it right that the person who is to check the charges for goods furnished by others, should himself furnish goods of the same description?—That depends upon the extent and the prices and how far they correspond with those furnished by others.

When you employ a person to provide the goods of another for you, you rely upon his getting them at the lowest price?—Certainly.

Then, if that same man furnishes you from his own stores with articles of the same description, do you think you have the same benefit of his judgment?—I rely entirely upon the prices of the article and the quality of the article.

Then you rely upon your own judgment, not upon his judgment?—I relied certainly upon my own judgment.

If he furnished no article to you from his own stores, it would be his duty to purchase from others as cheaply as he could; that you see, do not you?—Certainly.

And he would have no interest in not purchasing as cheaply as he could?—Certainly not.

But it must have occurred to you, I think, that if he furnished his own stores, as he could not charge higher than others charged, so he would have some interest in permitting others to charge an high price?—I never considered that to be a certain conclusion.

I do not ask you, whether you considered it as a certain conclusion, but whether it does not occur to you as some objection to the judgment which a man is to exercise upon the goods of others which they are to render to you, that he renders goods of the same description from his own stores, for which he is to be paid, and upon which he is to make a profit?—I own I saw no objection to the articles being furnished from his own stores, provided they did not exceed in price those which were furnished by other people, if they did not exceed the price at which other persons rendered them.



Now, I have one question more to ask you. Did you agree with him, that he should render goods from his own stores, and charge a commission upon them?—My agreement in 1794 specifies the whole.

But I ask you whether, having entered into that agreement with him in 1794, by which he was to purchase goods from others for government, you afterwards entered into any agreement with him, by which he was himself to sell goods to government, and to charge the same commission upon them as, under the original agreement, he was to charge upon the goods he purchased from others?—I think the construction which the court and the counsel are able to put upon my agreement will show what it was.

You must excuse me for pressing for an answer to that question?—I think it appears upon the face of the agreement, that there was no alteration in the agreement; and consequently no further latitude given to him for charging commission.

Lord *Ellenborough*.—General De Lancey; you must give us a distinct answer to the question, whether you authorised him to charge commission upon goods supplied out of his own stores?—I did not.

Mr. *Attorney General*.—I will ask you further whether knowingly you passed any account of Mr. Davison's in which he had charged commission upon goods supplied by himself?—I did not.

I think it is almost unnecessary for me to ask you general De Lancey, whether you would, knowingly, have passed such an account in which Mr. Davison took credit for commission upon goods supplied by himself?—I certainly, under my agreement, could not have done so; but Mr. Davison might have made out a case which might have required consideration.

If Mr. Davison had made out a case which required consideration, you of course would have fully considered it?—I should either have considered it myself definitively, or I should have made it a subject for the consideration of those under whom I acted.

That would have been perfectly correct: but the case never occurred, in which you had occasion either to consider such a claim yourself, or to refer it to others?—It never did.

It is hardly necessary for me to ask you, whether, during the continuance of his supply, you were ever informed, that he was charging commission upon goods furnished by himself?—There was nothing that ever led me to imagine that it was so.

Lieutenant General *Oliver De Lancey*, re-examined by Mr. *Wilson*.

At the time of that second agreement that Mr. Davison should supply from his own stores, was commission mentioned at all?—It was not.

Was any thing said about it?—Nothing at all.

The agreement was, that he was to supply from his own stores, and that in all other respects the agreement of 1795 was to be enforced?

Mr. *Attorney General*.—Indeed that was not said; I marked particularly what general De Lancey said.

Mr. *Wilson*.—Was it or not, in that second agreement, said by you or Mr. Davison, that in all other respects the agreement of 1795, was to continue in force?—I do not remember that any mention was made of it, but I always considered it so.

For the goods which Mr. Davison supplied, as well as for those which he purchased of others, he continued answerable until they reached the particular barracks?—He did.

Would that have been the case if Mr. Davison had been merely a seller?—Speaking in the common course of mercantile dealings, that would not have been the case.

The business of the seller ceases when the goods are delivered at the warehouse?—Yes.

I think you told us that was the reason why you employed Mr. Davison originally, that they were not sent to the barracks but were found to remain at the warehouses of the public carriages?—That was the reason.

Then Mr. Davison, as well for the goods he supplied, as for those he bought, continued answerable till their arrival at the barracks?—He did so, and answered very responsibly for them in case of rejection.

In what character was that responsibility? as seller or agent?—It was in the double capacity of seller and agent.

So that he continued in the character of agent as to the goods he supplied?—I do not see how you could well separate the characters.

When you say, there was no authority given by you to Mr. Davison, to charge commission upon his own supply; all you mean to say is that in that second agreement nothing was said about commission?—Nothing whatsoever was said about commission.

You said, you did not knowingly pass any account in which Mr. Davison had charged commission upon his own supply?—I did say so.

But you knew that commission was charged on the whole amount?—The examination of the accounts in the barrack department was referred to the accountants in the barrack-office, appointed by the government for that purpose. They passed the accounts; their reports to me were, that the accounts and vouchers were regular, and in conformity to the barrack regulations and the contract; and, upon that, I passed them. There was no particular specification of what commission was included in passing the accounts.

Did you look at the accounts at all?—Not particularly, I did not conceive it to be my duty.

It is charged, upon the face of the account,

on the whole amount: did you know that the commission was charged upon the whole amount?—I knew that the commission was charged upon all the accounts that came before me; they were reported to me to be regular, and in conformity with barrack regulations.

Did you know that commission was charged upon the whole amount?—I did not know that the commission was charged upon the whole. I do not know that the commission ever was mentioned. The accounts were passed by me as being reported to be regular, on the supposition that commission would naturally be included so far as it was regular.

Is that one of the general half-yearly accounts?—

Lord *Ellenborough*.—What is the period?

Mr. *Wilson*.—That is for the half-year ending in June, 1798?—This is signed by the accountant and by me; consequently, it must be a genuine account.

You observe there commission is charged upon the whole amount?—There is no appearance of it.

Mr. *Attorney-General*.—That does not appear indeed. The commission is charged in the former accounts, which are the component parts of this account, but this is the only account that general De Lancey sees.

Mr. *Garrow*.—The commission (amounting to 809*l.* 0*s.* 2*d.*) is carried into the general account, consisting of 33,169*l.* 7*s.* 1*d.*

Mr. *Wilson*.—In this paper commission is charged: does general De Lancey see this? I see the other is not signed by the general.

Mr. *Attorney-General*.—What the general sees is the half-yearly account which contains the totals of the charges specified in the other accounts. This includes the commission but does not name it. It is sent to the barrack-office, general De Lancey hands it to the accountants, who examine it, and then, he signs it.

Mr. *Wilson*.—Be so good as to look at that; it is the half-yearly account of bedding furnished by Mr. Davison, from the 25th of December, 1797, to the 24th of June, 1798, delivered to your office?—It is.

Below the different articles that are furnished by different persons, you will see a charge for packing and carriage, 1,738*l.* 1*s.* 4*d.*?—Yes.

Then you see a charge for freight 5*l.*?—Yes.

And then you see commission at 2½ per cent on the whole sum (including these articles) which is 32,000*l.* 6*s.* 11*d.*; so that commission is charged upon the whole amount, not only upon all the articles purchased and supplied, but also upon package, carriage and freight; the commission is charged upon the whole amount?—It is so.

That account is not signed by you, but it is delivered to the office and approved?—That account is examined by the accountants in the office; I see their initials. The names of the persons of whom the articles are purchased are specified here.

Lord *Ellenborough*.—So that upon the face of that account there does appear the name of the seller of every article, and Mr. Davison's name does not appear amongst them?—There does.

Upon that, therefore, according to your original agreement, the commission would be chargeable?—Yes, it would.

It must of course be understood that these were the names of real sellers?—Yes.

Mr. *Wilson*.—You, knowing then that commission was charged upon the whole amount,—

Lord *Ellenborough*.—He has not said that.

Mr. *Wilson*.—Having looked at this account, and this account being allowed by the accountants in the office, did you or did you not know that commission was charged upon the whole amount?—I knew that commission was charged according to what was specified upon the face of the account; if these were the names of sellers, I must naturally conclude that those persons were the sellers of the articles; I can only judge of an account according to the face of it, and the vouchers brought forward to corroborate it; and if they correspond, I must of course, suppose it to be a just account: I passed these accounts on being satisfied upon those heads.

Did you or not know, that Mr. Davison did, after this second agreement, supply from his own stores?—There can be no doubt of it.

Was there ever any other account? a separate account of the supply by Mr. Davison from his own stores?—No, there was not.

Does it not then follow, that if Mr. Davison supplied at all, it must be contained in that account, no matter how?—Whatever Mr. Davison was entitled to charge any where, must have been charged in that account.

Then commission is charged in that account upon the full amount of the whole supply?—The vouchers that were produced were in the form prescribed by the regulations of the barrack-offices.

But, as Mr. Davison did supply, his supply must, some how or other, be contained in that account?—Certainly.

And therefore there was commission charged upon it?—Certainly.

Mr. *Attorney-General*.—Many of these questions have introduced new topics.

Lord *Ellenborough*.—Much new matter has certainly been introduced; but in a case of this sort I would not interfere, as you made no objection: you have certainly a right to cross-examine the witness upon this new matter.

Lieutenant General *Oliver De Lancey* re-cross-examined by Mr. *Attorney-General*.

You knew that Mr. Davison furnished some stores himself?—Yes.

When Mr. Davison's accounts were sent in to the office, you referred them to the accountants?—I did.

The accountants approving them, you signed the general account?—I did.

You signed it upon the credit of the accountants' approbation?—Certainly.

You took it for granted that the accountants would not allow any thing which was not duly proved before them?—I relied upon their accuracy, diligence, and integrity.

And in that confidence you signed the report?—I did.

Upon the face of the report that you signed there was no charge of commission?—So it appears from the accounts that I saw.

You, therefore, could not personally know what was the amount of the commission, which those who examined the account did allow?—I could not know the extent of it.

Lieutenant General *Oliver De Lancey* examined by the Court.

Lord *Ellenborough*.—I think you said, that when you employ a person as agent to buy from another, you rely upon *his* judgment; but when you employ a person to buy from himself, you rely upon *your own* judgment?—Yes.

Knowing that you were to rely upon your own judgment, and that you had not the benefit of the judgment of Mr. Davison as your agent, when he was buying from himself, would you, wittingly, that is with a consciousness that you were doing so, have allowed him upon those goods which he himself furnished, a commission which is paid by the public for his discretion and judgment in buying from others?—The agreement I made with him excludes that.

But by the subsequent agreement entered into with him, although you authorized him to supply as any other seller might, did you authorize him to take the seller's profit and the commission besides?—No.

Should you have thought yourself guilty of a great breach of public duty if you had so authorized him?—I should have thought I acted contrary to my duty, and not according to the instructions I received.

Had you, from first to last, any knowledge that the names of persons who did not actually supply, were introduced into the account as the names of persons who did supply?—I had no reason to believe that was the case.

Were the names Watson and Allen given to you as those of persons through whose medium Mr. Davison made the supply?—No.

Had you ever any notion that commission was allowed to Mr. Davison upon supplies made by Mr. Davison under the names of Watson and Allen?—I understood commission was allowed generally upon all supplies made

in conformity to the regulations of the barrack department.

Had you any notion that commission was allowed upon sales made by him under the names of those persons as sellers, they not being in fact the real sellers?—I had no notion of that.

Mr. *John Bowring* sworn.—Examined by Mr. *Holroyd*.

I believe you were book-keeper to Mr. Davison at his office in St. James's-square?—First in Harpur-street, and afterwards in St. James's-square.

Were you book-keeper to him during the whole time that he supplied the barrack-office with stores?—Yes, I was.

Had you the management of the making out of the accounts?—I had.

Were they under your entire management?—Yes, the whole.

Mr. Davison, I believe, had other public concerns besides supplying the barrack stores?—He had various other public concerns.

Were they to a very great extent?—They were.

And various in their kinds?—Very.

Were the accounts of all these under your management?—Yes, they were.

Do you remember when Mr. Davison himself first began to supply the barrack-office with his own stores?—He began to supply, I think, about two or three weeks before I came to him, before I engaged with him.

Did you come to him about the end of the year 1797, or the beginning of 1798?—No, January, 1795.

You came to him a short time before he first began?—Yes, in 1795.

Do you remember his first beginning to supply the barrack-office from his own stores in the year 1798?—Perfectly well.

Previously to that time he bought entirely of others?—He did so.

Do you remember the first half-yearly account (after he began to supply from his own stores) being made up?—I do.

Did you make any observation about the mode of making it up? Did any thing occur to you on that subject?—

Mr. *Attorney General*.—My lord, I must object to this. In this cause, what passed between Mr. Davison and his clerk cannot be evidence. I am quite indifferent as to it, if your lordship thinks there is the slightest colour for receiving it.

Mr. *Holroyd*.—It is a material fact as to the mode of drawing up the accounts.

Mr. *Dallas*.—I offer this as evidence of the intention, it is a direction given; the way in which I apply it is this:—The agency would have gone on in a certain course, had not the suggestion of the witness been made; but on the suggestion of the witness an alteration took place.

Lord *Ellenborough*.—Did you draw up the account?—Yes, I did.

Lord *Ellenborough*.—I think he may give evidence as to the manner of drawing up the account, and his reasons for drawing it in a particular way.

Mr. *Holroyd*.—You drew out the account?—I did, either in copy or in the original.

Did any difficulty arise as to the drawing it out?—In regard to the supplies from Bedford-street, I told Mr. Davison I was at a loss how to state them as in the shape of a bill of parcels; observing, that he could not make out a bill of parcels in his own name, while acting as an agent, I thought. I suggested to Mr. Davison the difficulty there was to state the accounts in the shape of a bill of parcels.

How had the accounts been made out before?—Every account had been made out with the names of the bills of parcels.

Had all the accounts before been made out "Alexander Davison debtor" to the person of whom he bought?—I believe they had not all been done so, for during the first year or two there had been an unsettled plan, later, in the period of which I speak, I received all the accounts back and a form for making them out anew.

In what way were the accounts made out?—In the manner in which they are now stated.

Lord *Ellenborough*.—Was it for a considerable time undecided how they should be made out?—I understood so.

Could there be any other way, than the *veritas facti*, stating the persons of whom they were bought?—They were delivered in without the persons' names.

Had you bills of parcels in blank, without the persons' names?—No, the general invoice had no names; it was done rather in a general way, drawn up in a general amount.

Mr. *Holroyd*.—Was Mr. Davison made the debtor for the goods that were bought, to the several persons of whom they were purchased?—Certainly.

Lord *Ellenborough*.—Those bills of parcels were of course sent in?—Yes.

Mr. *Holroyd*.—When you were making out the bills of parcels for the goods sold by Mr. Davison himself, you were at a loss how to make them out?—I was.

Did you propose to Mr. Davison to make them out in any particular way?—I did not propose it; I told him I thought they could not —

Lord *Ellenborough*.—Before you begin, I should give you this same caution I gave the other witness,\* that you are not bound to accuse yourself of a crime. You will speak to every thing truly and fully as to which you do speak: but where you feel that you may be in

involved in such consequences as I have adverted to, you will apply to me to know whether you are bound to answer.

Witness.—Mr. Davison directed me to make out the accounts in the name of Watson; because he saw the informality of making them out in his own name.

Mr. *Holroyd*.—Was that done upon the difficulty you had suggested?—It was.

Nothing of that kind was done till after you had suggested that difficulty?—No; not till I found that difficulty.

Before the goods were ordered which Mr. Davison supplied, were the patterns and prices sent into the barrack-office?—Yes, they were always, according to my remembrance.

Do you know how the prices were regulated?—They were kept below the prices that Mr. Davison was paying to other persons.

How much below those prices?—I think fully from two and an half to three and a half per cent, or more sometimes; but I think that may be the average; it is full that.

Lord *Ellenborough*.—Below the market price?—Below what he could have procured them at.

Mr. *Holroyd*.—Were any of them made by any other persons than those employed at the Bedford-street Warehouse?—Not any of his supply.

Those which Mr. Davison supplied were all made at that warehouse?—Yes, at Bedford-street.

That was where he carried on his army-clothing business?—That was where he carried on his business as an army clothier, as a tradesman.

Do you know what number of men he had there in his employ?—He had several clerks; from four to six.

How many men? a very large number?—From twenty to thirty, and up to fifty, employed in the house; and I believe several hundred labourers out of the house to whom the work was distributed.

When orders came for stores, were they frequently wanted in great haste?—Generally so.

Did they frequently come suddenly, and unexpectedly?—Very suddenly, sometimes several times in a day.

And large orders?—For very considerable quantities.

Could they have been supplied so quickly, if Mr. Davison had not been assisted by his own people?—I really believe not.

Did he at times take them from his army-clothing business, for the purpose of supplying those sudden orders?—Always, when any emergency required.

In the year 1802, I believe the accounts were made out differently?—The first half-year of 1803, they were made out differently from what they had been from 1798 to 1802.

N

\* John Allen, vide p. 133.

Lord *Ellenborough*.—They were made out differently from the nine preceding half-years?—Mr. Davison did not supply any thing from June 1802, till the beginning of 1803.

Mr. *Holroyd*.—That was the time of the peace, was it not?—I believe it was.

Do you remember any conversation with Mr. Davison in June 1802?—It was after the June account was made up, which I suppose was the latter end of 1802; it was in the interlapse of time I think that Mr. Davison had not supplied any thing, during that half-year.

From June 1802, to Christmas 1802, there was no supply from Bedford-street?—I think that was the half-year.

Did you speak to Mr. Davison upon the subject of altering the accounts?—I did, about that period; I cannot be particular to a month or so, but I knew it was in the latter end of 1802.

Tell us what it was?—I had some doubts in my mind whether that would be admitted; I told Mr. Davison, I thought he had better not let the commission stand as a charge upon the barrack supplies from Bedford-street: he took it as an idea of my own, as a suggestion of my own.

You, having some doubts about the commission, mentioned that to Mr. Davison?—I did.

Lord *Ellenborough*.—As to the charge for the future?—For the past. In stating the accounts for the future that I had some doubt whether the charge was consistent with right or not. I believed at the outset that it was a regular charge, because I understood that Mr. Davison was entitled to two and an half per cent upon the whole amount of his barrack business, and I conceived that he was right in charging it.

Mr. *Holroyd*.—Having thought it right at the first, you had some doubts afterwards?—Yes.

And you mentioned that to Mr. Davison?—Yes, I suggested to Mr. Davison the propriety of letting it stand.

What was done upon that?—Mr. Davison said, upon that, "well then, get the accounts back, and make the proper alteration; if I am to err, I would rather err on the other side." I remember his making use of those words.

Are you sure that he directed you to get the accounts back, in order to make the alteration?—I am certain that he did so.

Did you apply to any body at the barrack-office for that purpose?—I applied to Mr. Stanbank almost immediately for the accounts.

In what situation is Mr. Stanbank in that office?—I always knew him as the accountant, under the barrack-master-general.

Was he, as you supposed, the proper person to make the application to?—Certainly; I never had any conference with any other person regarding the accounts.

Lord *Ellenborough*.—What was the description of his office?—He was the accountant of the office.

At what time was this?—The latter end of 1802, or it could not be later than the beginning of 1803.

Mr. *Holroyd*.—When you applied to him, did you get them back?—I did not; Mr. Stanbank said he could not give them me.

Mr. *Attorney-General*.—You cannot repeat what Mr. Stanbank told you?

Mr. *Dallas*.—Mr. Stanbank's refusal to give them back is a fact.

Lord *Ellenborough*.—Yes; I cannot receive what he gave as the reason.

Mr. *Dallas*.—We do not wish to ask the reason: we only want the fact that Mr. Stanbank refused to give them back.

Did you apply to him for that purpose more than once?—To the best of my recollection, I applied to him twice: yes, I knew I applied to him a second time.

Did you, at either of those times, tell him for what purpose you wanted them?—The second time I applied for them, I told him what I wanted them for; the first time that I applied to him for them, I did not.

You got them, however, at neither of those times?—I did not.

Lord *Ellenborough*.—Is Mr. Stanbank living?

Mr. *Wilson*.—Yes.

Lord *Ellenborough*.—Have you subpoenaed him?

Mr. *Wilson*.—Yes.

Mr. *Holroyd*.—Not getting back the accounts, was any further direction given by Mr. Davison with respect to them?—The second time I applied to Mr. Stanbank for the accounts, when he told me he could not give them me back, I told him the purpose for which I wanted them, and he said, "as they cannot be corrected on the face of the accounts, let a credit be given in some future account." I asked him, what account: Mr. Stanbank replied, "some other account-current."

Was it Mr. Stanbank or Mr. Davison who said that?—Mr. Stanbank. I told Mr. Davison, after my first going to Mr. Stanbank; and Mr. Davison said "Well, then, let it be credited in the account of the barrack-master-general; keep it in mind, and let it be credited in the account of the barrack-master-general."

How were the accounts made out afterwards?—With respect to the Bedford-street supplies, "*Alexander Davison*" I do not know whether it was "*debtor to*," or "*bought of*" the Bedford-street warehouse, or the Bedford-street house.

Was any commission charged in those sub-

sequent accounts?—No, the amount of that supply was deducted.

When Mr. Davison had directed that that charge should be deducted in some future account, did you make such a deduction?—It was intended to have been made a credit in an account-current. Mr. Davison directed me to make it at least; I should say a credit in the account-current with the barrack-master-general.

Was any entry of it made at that time in Mr. Davison's books?

Mr. Garraw.—We must not hear of any entries made in Mr. Davison's books.

Lord Ellenborough.—You may ask whether any entry was made in any account sent in to the barrack-master-general.

Witness.—There was no account-current sent in with that entry; there was a supplemental account sent in afterwards, in which it was omitted.

How came that?—It was merely an omission on my part. I remember the supplemental account was made up in haste: Mr. Davison did not wish to delay paying the balance, whatever it was; and it might be through that haste it was omitted.

Was that supplemental account made by yourself?—Yes, it was.

It was done in haste?—Yes.

From that haste it was omitted?—Yes, it was. I remember, I had not done much to his books for some time; I had been unwell, and I was not able to do much, my sight being somewhat impaired; and that might be the reason why I omitted it.

Mr. John Bowring cross-examined by Mr. Garraw.

Upon the refusal of this gentleman, to whom you have been referring, to permit you to have those accounts to alter, did you present any memorial to the barrack-master-general, stating that the accounts had proceeded upon an erroneous principle for a considerable time, and desiring to correct them?—No, I did not; I considered that the other mode of correction would be sufficient; there was never any letter that passed from Mr. Davison or me to the office on the subject of the correction of the accounts particularly.

Did you draw the attention of the office to the erroneous principle upon which the accounts had been for sometime proceeding?—I did not in general present any representation in writing; my general communication was with Mr. Stanbank.

But having been refused those accounts by Mr. Stanbank, did you then memorialise?—I did not.

Mr. Davison told you to credit it in some account with the barrack-master-general?—Mr. Stanbank told me to do so.

Upon that, Mr. Davison said "very well, let it be remembered, and credited to the barrack-master-general in some future ac-

count!"—I do not think he said *some future account*, but, "let it be inserted in some account with the barrack-master-general."

Had you any account with the barrack-master-general open at that time?—Yes, and have now.

But it unfortunately went out of your mind?—Yes.

What led to Mr. Davison's supplying out of his own stores?—The difficulty of obtaining supplies, and the disappointment which we had met with in consequence.

I suppose the office had met with some disappointment, and, therefore, it was necessary to exert new energy?—I do not recollect any disappointment at all.

Had any of the persons who had supplied you stated that it would not be convenient to supply you any longer?—I do not recollect any.

Can you name any one person by whom you had been supplied, who refused to continue the supply, or stated any reasons why it could not be made still longer?—No, but I recollect the goods came in slower at some times than at others.

We have been told that the barrack supply never was deficient?—Not while Mr. Davison supplied.

Nor previous to his supply?—No, I believe not.

You have told us that Mr. Davison supplied from two and a half to three and a half per cent lower than other persons: was it regularly so much below the price?—I believe that Mr. Davison inquired what other persons would supply them at, and by that he regulated his tender to the barrack-master-general.

Then if he regulated his tender by Mr. Darby's prices for instance, how came they to be under Mr. Darby's prices?—Because he endeavoured to keep his price under Mr. Darby's.

It was his fixed intention to be under the prices of Mr. Darby?—He told me, he was determined his prices should not be above Mr. Darby's.

It was much better than not being higher, for they were three and an half lower?—I believe they were.

Did you apprise Mr. Darby and the other contractors, to see whether they could lower their prices?—I believe they were apprized, I recollect one article.

What was that?—Round towels.

What contractor?—Mr. Darby: I believe that Mr. Darby asked me the price which we were charging.

Did Mr. Darby state any difficulty in supplying them at that price?—Mr. Davison was supplying immense quantities of that article; Mr. Darby expressed himself hurt that he was not doing that part of the business; and he asked me what Mr. Davison was then charging; I told him, and Mr. Darby said it was a price quite low enough.

He offered to supply them at that rate?—No; he said he could not supply at that rate.

When was that?—I cannot recollect the time; after the business was begun some three or four years.

Were you the person who applied to Allen to sign these fabricated receipts and bills of parcels?—Mr. Davison directed me to get them made out in the name of Watson, and subsequently in the name of Allen, as a matter of form.

How many bills of parcels did you make out in that form, in your first manufactory of receipts?—I did not manufacture any.

But you caused them to be manufactured by Allen?—I took Mr. Davison's directions.

I do not mean to say that you were the master-manufacturer; but you circulated them?—I took Mr. Davison's directions and communicated them to Mr. Watson or Mr. Shedden.

How many constituted your first adventure? For how many by-gone half years was your first manufacture?—I believe Mr. Watson signed them half-yearly.

Do you mean to swear that he signed them for one half-year, and then not any till another half-year had gone by, or that the first manufacture was for several by-gone half-years?—I cannot speak to it from memory, I think it might be some months afterwards.

Do you not know that the first bills of parcels purported to be for supplies for years past?—I remember the accounts came back from the barrack-office, to be put up in a different shape.

Lord Ellenborough.—To have names added?—Yes; to be abstracted, to be put up with abstracts.

Mr. Garrow.—Now I ask you, for I will not lose sight of that question, how many receipts in the name of Watson were manufactured the first time?

Mr. Wilson.—You asked him before as to bills of parcels.

Witness.—They were put up with the abstracts.

Mr. Garrow.—Do you mean now to say, that the first was, for instance, immediately on Christmas-day coming, for the supply up to Christmas-day, or that it was written a good while afterwards?—They were written certainly at a subsequent period.

Were not the first receipts which were signed by Allen, for half-years that were long past?—In the year 1803 the accounts were delivered back, because the abstracts were not sent with the accounts.

In consequence of that were not the receipts made out as for supplies for half-year after half-year for several years past?—Yes, in 1801, I think.

There were then receipts manufactured by you, by Mr. Davison's orders, to be signed

as for supplies for several half-years?—They were certainly for supplies to that present period; they might be for three or four half-years.

Upon stamps, as if they were regular vouchers?—Yes.

Then you went on, half-year after half-year, manufacturing the same sort of fabricated receipts?—Yes.

Besides directing the manner in which it was to be done, did Mr. Davison specify the person to sign them?—I believe Mr. Davison, in order to comply with the forms of the barrack-office, and seeing the inconsistency of bills of parcels "Alexander Davison bought of Alexander Davison," said "the voucher is of no necessity, because the prices are, and will be, agreed on; let them be taken in the name of Mr. Watson; he can vouch that the account is entered in the books to me, as well as any other persons applying to Bedford-street."

Will you have the goodness to translate that into English?—Mr. Watson kept the books; and he thought as he could not produce a voucher "Davison to Davison," Mr. Watson was the proper person to state it.

Did it occur to you to suggest to him, that the better way would be that the real fact might be stated, that they were furnished by himself, and then that Watson should state the fact appearing on the books?—Mr. Davison directed it to be so.

Was it perfectly well known that the Bedford-street warehouse was Mr. Davison's?—Publicly known.

You did afterwards fall into the inconsistency of making "Alexander Davison debtor to the Bedford-street warehouse." You have told us so; instead of the mask of Watson or Allen, did you not say "Alexander Davison debtor to the Bedford-street warehouse?"—That was no suggestion of mine.

Whose was it?—It was an arrangement of Mr. Davison's, a plan that he hit upon.

The reason for taking Mr. Watson as the pretended seller, and Mr. Allen as vouching for the pretended payment to him was to do away the effect of Alexander Davison purchasing of Alexander Davison?—It was so.

Upon those sales commission was charged?—Yes.

After that, when no commission was charged, Alexander Davison did become the purchaser from his own Bedford-street house?—Yes.

That was Alexander Davison purchasing of himself?—It did not appear so: Shedden signed the accounts.

It was perfectly well known that the Bedford-street warehouse was Mr. Davison's?—Oh! yes.

Mr. John Bowring.—Re-examined by Mr. Holroyd.

You have said that the barrack-office were not disappointed before this arrangement was

made, that you were before always able to get the articles; but were you able to get them so quickly?—Never so rapidly.

The larger the orders, were they generally the longer in being complied with, till Mr. Davison supplied them himself?—Yes.

At the time when several of these half-yearly accounts were made out at once, where, was Watson?—I believe he was absent at that time.

Was that the reason why Allen signed the receipts for him?—As well as my recollection serves me, it was.

All the alteration that was made afterwards was, that instead of Alexander Davison buying of Watson, it was buying of Bedford-street house?—Yes.

Did not Shedden sign those?—Yes he did.

Lord *Ellenborough*.—Can you assign any reason of convenience for making Mr. Davison debtor to the Bedford-street house, instead of making him debtor to Watson or Allen, except that he got the commission in the one case and could not get it in the other?—I do not believe it was on the score of commission.

Can you assign any other reason than that for his doing it? If you can assign any other reason, it is material to declare it.—I cannot: Mr. Davison assigned none to me.

*John Stanbank*, Esq. sworn.—Examined by Mr. *Harrison*.

I believe you were accountant at the barrack office in 1802 and 1803?—Yes I was.

Do you recollect, at the close of 1802 or the beginning of 1803, Mr. Bowring coming to you upon the subject of any accounts he had before delivered to you?—I think I do.

Did he apply to you twice, or once only?—I really cannot say.

Did he state to you his reason for wishing to have those accounts back?—He stated to me that it was for the purpose of making some correction.

Did he mention to you the part of the account he wished to have an opportunity of correcting?—I do not know that he did.

Have you any recollection of his stating to you the reason why he wished to have them back?—No, except to make some corrections.

Did you give him back the accounts?—No, I did not.

Why did you refuse them?—Because the accounts had been settled, and passed, and signed by general De Lancey: and I did not think it my duty to give them out of my possession.

Do you recollect giving him any direction as to what course he might pursue in order to attain the same object?—I think I said, that if he had any errors, he might correct them in a supplemental account, that he might give credit for them in a supplemental account.

This was about 1802, or the beginning of 1803?—I think so.

*John Stanbank*, Esq. cross-examined by Mr. *Attorney General*.

There was a supplemental account afterwards delivered?—Yes.

In which many errors were corrected?—Yes, many errors were corrected. Your lordship perhaps is aware that the date of the act for appointing military commissioners is May 1805.

Lord *Ellenborough*.—Yes; but there were other transactions which might have drawn the attention of a person to the subject before the passing of that act. Did he apply again?—I do not recollect whether he applied a second time.

Did he state to you the nature of the error? that it was a pecuniary overcharge?—I do not recollect that he did.

Endeavour to recollect whether he stated to you that there was a commission charged, which ought not to have been charged?—Certainly not.

Did he state to you that there were improper vouchers put in which he wished to retract?—I have no recollection whatever of such a circumstance.

Mr. *Harrison*.—I believe we have the date of the supplemental account; if not, I will ask the witness.

Lord *Ellenborough*.—I believe it was May 1806; you may perhaps wish to have it in your hands; I see it begins only in 1804.

*Witness*.—The day on which general De Lancey ceased to be barrack-master-general was November 10th 1804; and I presume that account is from November 11th 1804.

Lord *Ellenborough*.—I see the earliest date in this account is November 1804; it is for your consideration whether that may furnish you with any observation as to it's not coming into this account.

Mr. *Attorney General*.—Will your lordship permit me to ask Mr. Stanbank a question as to that?

Lord *Ellenborough*.—Certainly.

Mr. *Attorney General*.—The first item is dated November 1804; it begins with "Errors in Bedding" and so on; those apply to the times when the erroneous charges were made, do not they? I see here are losses, averages, deficiencies of stores, recovered as per abstract: Though the date of this account is November 1804, do not these entries relate to transactions which took place at an earlier date?—Certainly.

Lord *Ellenborough*.—It is the aggregate amount that might, in the mode of accounting, have included errors in 1797 and downwards to 1802?—Yes.

General the Right Honourable *Francis Rawdon Earl of Moira* (Constable of the



Tower of London)\* sworn.—Examined by Mr. Dallas.

I believe your lordship has, for some years, been acquainted with the defendant, Mr. Davison?—I have been acquainted with him a good many years; but I had no intimacy with him until, by the permission of Mr. Pitt, I solicited him to take the office of commissary-general to the army which was then under my command.

Your lordship applied to him to take the office of commissary-general of the army of which your lordship then had the command?—I solicited it as a favour; and I believe he would not have accepted it, but on account of the light in which it was put to him, as a great public service.

Had your lordship an opportunity of observing his public conduct?—His conduct was clear and punctual; answering every expectation I had formed; strictly delicate in refusing emoluments which he might well have claimed.

From your lordship's general knowledge of his conduct, is he a person whom your lordship would think capable of committing a fraud?—Certainly not. I never had the remotest ground for suspicion; if I had had the slightest ground, I never could have again solicited him to accept the office of treasurer of the Ordnance; under circumstances which never could have made it an object to him from any pecuniary consideration. Shall I state the particulars?

Lord Ellenborough.—One is very unwilling to diminish the scope of these inquiries, but the general inquiry is as to the general character.

Lord Moira.—Any possible emolument which he could have derived by accepting the office of treasurer of the Ordnance, was under 76*l.* a year: by accepting that, he was obliged to sacrifice his half-pay as commissary-general; and his full-pay, as treasurer of the Ordnance, was under 70*l.* a year; I did offer to him that, which I had settled with lord Grenville; that was to be all the emolument of the treasurer of the Ordnance.—

Mr. Attorney General.—I am afraid, my lord, I must interrupt this statement.

Lord Ellenborough.—The correct inquiry is, as to the general character of the accused, and whether the witness thinks him likely to be guilty of the offence charged in the information. I do not wish in such a case to contract the limits of the statement; at the same time I must not let them be too extensive. Lord Moira has said, most emphatically, that he could not conceive that the defendant would be guilty of fraud, otherwise he would not have appointed him to an office very near to himself, and which had, at the same time,

so little emolument that a man could have some but honorable motives for accepting it; lord Moira has also said that he had found him perfectly delicate as to emoluments, and sacrificing those which did belong to him.

The Right Honourable Sir Evan Nepean, Baronet, sworn.—Examined by Mr. Wilson.

How long have you known Mr. Davison?—I have known Mr. Davison since the year 1782; my first acquaintance with him took place on his return from Canada, he brought a letter of recommendation from sir Frederick Haldimand, the governor of Canada, a letter of introduction to me; that was the origin of my acquaintance with Mr. Davison.

Have you known him ever since?—I have.

Have you ever, being in the public service yourself, had occasion to know Mr. Davison's conduct when employed by the public?—I knew Mr. Davison when I was under secretary of state. The only opportunities I had of observing his conduct were while I filled the office of under secretary of state; he was employed in various services by the secretary of state, and, to the best of my knowledge, executed his duties with great punctuality and fidelity.

What has been Mr. Davison's public character?—As to my own opinion of Mr. Davison, I always considered him a very honest and honourable man.

Is he a man whom you think likely to commit a fraud?—Speaking of Mr. Davison from what has come under my own knowledge, I should think him incapable of committing a fraud.

Sir Andrew Snape Hammond, Baronet, sworn.—Examined by Mr. Harrison.

How long have you known Mr. Davison?—I do not distinctly recollect, but I should think from about the year 1793 or 1794; about the year 1794, perhaps.

Have you, in your public situation,\* had an opportunity of observing what has been his conduct as a servant of the public?—I have. After the marines were no longer clothed by the admiralty, an advertisement was issued from the Navy board, that they would receive offers for the clothing of the marines; and Mr. Davison took the contract (his price being considerably lower than the rest) at a price which surprised the Navy board very much, for it was considerably lower than that at which clothing had been supplied. During the time he kept it (to the end of the war) he gave general satisfaction: there were two general officers to inspect the clothing, and they gave the fullest approbation to Mr. Davison's supply. Am I going into too many particulars?

Lord Ellenborough.—As to the inspection of the officers, that we cannot hear of.

Witness.—I will only add, that whenever

\* Afterwards governor-general of Bengal; created, December 7th, 1816, Marquess of Hastings.

\* Comptroller of the Navy.

there was any alteration required by the different divisions of marines, and it was signified to Mr. Davison, he always appeared perfectly ready to adopt it without any additional expence, so that the Navy board was perfectly satisfied with the whole of the transaction.

**Lord Ellenborough.**—From your knowledge of Mr. Davison's character and conduct, do you think him capable of committing a fraud?—I should have thought him the last man in the world that would have attempted any thing of the kind, or even to have been a cause of it.

**Sir William Rule, Knight, sworn.—Examined by Mr. Wilson.**

You are, I believe, one of the surveyors of the Navy?—I am.

You have been so a great many years?—About fifteen years.

How long have you been acquainted with Mr. Davison?—From the first time I came into the office, about 1793, or 1794.

Has he been employed by the Navy board during any part of that time?—He has been employed by the Navy board as a contractor for marine clothing about four years and a half.

I need hardly ask whether he performed that contract to the satisfaction of the Navy board?—Most perfectly so.

From what you have seen of his manner of dealing in that business, and what you have known and heard of him in other respects, what is your opinion of his general character?—I should have thought him incapable of doing a fraudulent action.

**The Honourable William Wellesley Pole,\* sworn.—Examined by Mr. Harrison.**

How long have you known Mr. Davison?—I have known Mr. Davison since the year 1804.

Have you, in your public situation, had any opportunity of observing his conduct in the service of the public?—I never had any thing to do with Mr. Davison but once, in my public capacity; at the time I was clerk of the Ordnance, I was employed by lord Chat-ham to negotiate with Mr. Davison, respecting some arms which were in his possession when the Ordnance were very much in want of them; Mr. Davison agreed to let the Ordnance have fourteen thousand stand of arms, at the price which the gun-makers had charged him, and he sent in the bills of parcels, and refused to take any commission or profit upon them.

From the opportunity you have had of forming a judgment of the character of Mr. Davison, what is your general opinion of his character? and do you consider him capable of a fraudulent or dishonest action?—I never be-

fore that had an opportunity of knowing Mr. Davison's conduct; and in that instance I thought he acted with a great deal of public spirit, and great disinterestedness.

**John Martin Leake, Esq. sworn.—Examined by Mr. Holroyd.**

I believe you are one of the comptrollers of the army accounts?—I am.

In that character have you, at any time had Mr. Davison's accounts before you?—Yes.

Have those been examined by you?

**Lord Ellenborough.**—I really must interfere. It would be dangerous as a precedent to permit particular instances to be given in evidence where there can have been no notice. General evidence of general character is admissible; but this is certainly contrary to all rules.

**Mr. Holroyd.**—I ask this question, to show Mr. Leake's means of knowledge.

**Lord Ellenborough.**—You ask as to his knowledge of the examination of public accounts. Now, would it be proper to try a collateral issue for which the other side cannot be prepared?—It is as clear a rule of evidence as can be that you must not examine to particular facts.

**Mr. Attorney General.**—I trust your lordship will consider me as excusable for not interfering, but this is certainly not admissible. I wished not to shut out any thing which could possibly be given in evidence.

**Lord Ellenborough.**—No judge at the Old Bailey would receive such evidence.

**Mr. Holroyd.**—I ask this only as introductory of general character.

**Lord Ellenborough.**—If you mean only to ask whether the witness has had such means of knowing him, as to form the judgment he is about to give, I have no objection to that.

**Mr. Holroyd.**—Had you opportunities, from examining Mr. Davison's accounts, of knowing his general character?—I have seen many of his accounts, and many of them were extremely regular; in the years 1794, 1795, and 1796, they were before the comptrollers.

**Lord Ellenborough.**—I cannot admit this; you must go into general character.

**Witness.**—I know nothing of his general character.

**Mr. Holroyd.**—From your means of general knowledge, what is your opinion of Mr. Davison's general character?—That Mr. Davison has been very correct in his accounts in general; the last account before the comptrollers was not so.

**Lord Ellenborough.**—We will not go into the question whether they were correct or incorrect.

\* In 1821 created Lord Maryborough.

Mr. Robert Hunter sworn.—Examined by Mr. Wilson.

How many years have you been acquainted with Mr. Davison?—About seven and thirty; seven or eight and thirty.

Was he in his youth ever in your counting-house?—Yes, he was; when he first came from the country, he came into my counting-house, and lived with me six or seven years.

Have you been acquainted with him ever since?—Ever since; I sent him to Canada, where I settled him in connexion with another merchant, and corresponded with him twelve or thirteen years; they were in a great way of business.

Have you known Mr. Davison's general manner of business?—I have frequently called upon him, and sometimes been connected with him in his business with government.

You have had dealings with him?—I have had some little transactions with him in speculations, in purchases of things in the India line.

From all these circumstances of knowledge concerning Mr. Davison, what is your opinion of him? Is he a man likely to be concerned in any fraud?—His character is as perfectly pure as the character of any man can be, in my opinion.

After that I need hardly ask you whether you think he would be guilty of a fraud?—I think he would not, from every knowledge I have had of him.

Mr. John Cowley sworn.—Examined by Mr. Holroyd.

I believe you were at school with Mr. Davison?—Yes, exactly so. I knew him very early in life; I have known him more than thirty years.

Have you been intimately acquainted with him during that period?—The whole of that time, except the short time he was in Canada.

What is your opinion of his general character?—I have always found him an honourable man. I have had considerable dealings with him, and he has paid me honourably.

And you believe him to be an honourable man?—I certainly believe him to be so: I have always found him so.

In your judgment, is it probable that he would be guilty of a fraud?—No, certainly not.

Mr. William Smart sworn.—Examined by Mr. Harrison.

How long have you known Mr. Davison?—I think about forty years; I have known his family about fifty.

Have you, in the course of your life, had transactions in business with him?—Yes, considerable dealings. I have been in the banking line five and forty years or thereabouts.

From your knowledge of him, what is your opinion of his character?—I have considered

him to be an honourable man, a fair man in his dealings.

Do you think him capable of committing a fraudulent action?—No, not intentionally: I have never seen any thing like it in all the time I have known him.

Mr. James Davidson sworn.—Examined by Mr. Wilson.

Are you any relation of Mr. Alexander Davison?—No. My name is Davidson, his name is Davison.

How long have you been acquainted with Mr. Alexander Davison?—Between twenty and thirty years.

Have you had any dealings with him?—I have.

From all that you have observed of him, and all that you have known and heard of him, what is your opinion of his general character?—You say "known and heard;" all that I have known of him is that he has been an honest man, an honest dealer with me as a merchant.

From what you have heard in the world at large, what is your opinion of him?—There are a variety of reports concerning Mr. Davison: those I know only as the world knows; but as to his dealings with me, I always found him an honourable and honest man.

I dare say that lately you have heard a great deal said against him?—Yes.

Before that, what was his general character?—That of an honest man.

Do you think him a man capable of committing a fraud?—Certainly not.

Mr. Alexander Black sworn.—Examined by Mr. Holroyd.

How long have you known Mr. Davison?—Ten years.

Have you had connexions in business with him?—Very large connexions.

What is your opinion as to his general character?—I have found him always a very honourable man.

Do you believe that he is capable of committing a fraud?—I should think not.

Mr. — Gilpin sworn.—Examined by Mr. Harrison.

How long have you known Mr. Davison?—I dare say these twenty years.

Have you had transactions in business with him?—Not many, but I have had some.

From what you have seen of him, what is your opinion of his general character?—Very honourable and very liberal.

Do you think him capable of committing a fraud?—From my own knowledge of him I should think not.

The Right Hon. Charles Long, joint paymaster of the forces sworn.—Examined by Mr. Wilson.

You have been in high situations under government?—I have.

How long have you known Mr. Davison?—I have known him since the year 1791 or 1792.

Have you had occasion to observe his transactions with government?—I have seen some of them during the early part of the period when I was secretary to the Treasury; from 1791 to 1796, I should think.

What is your opinion of Mr. Davison's general character?—I have no reason whatever to form an unfavourable opinion of Mr. Davison from what I have seen of him.

What opinion have you formed?—I certainly had a favourable opinion of him. I have not seen many of his transactions myself, but I certainly thought that his transactions, when I was secretary of the Treasury, were perfectly fair and honourable.

Is it, in your opinion, probable that Mr. Davison would be guilty of any fraud?—I think not.

*William Huskisson, Esq.* sworn.—Examined by *Mr. Holroyd.*

How long have you known Mr. Davison?—I think from the year 1794 or 1795; I believe 1794.

Have you had any concerns with him?—I had two public transactions as agent for a colony during the last war: I received instructions to provide various articles.

*Lord Ellenborough.*—Without entering into particulars, inform us whether you had the means of knowing his character?—Yes, I had.

*Mr. Holroyd.*—What is your opinion of his character and conduct?—Upon those two transactions I thought his conduct most fair and honourable; and those whom I employed gave that report of his conduct.

From what you have known of him, should you think he would be guilty of a fraud?—I certainly should not think so; I had no reason to think so.

*Andrew Jordaine, Esq.* sworn.—Examined by *Mr. Harrison.*

How long have you known Mr. Davison?—I cannot speak exactly to the time, but I should suppose seventeen or eighteen years; upwards of fifteen certainly.

Have you, during that time, had any transactions with him?—I have.

From your knowledge of him, acquired in those transactions, and your general knowledge of him, what is your opinion of his character?—I always considered him to be a man of the highest respectability and reputation.

The concerns I have had with him have been for goods sold to him.

*Lord Ellenborough.*—We must not enter into particulars.

*Mr. Harrison.*—In your opinion, is Mr. Davison capable of committing a fraud?—Not to my knowledge; in every thing I had to do

with him, I always found him extremely punctual and regular.

*Mr. Dallas.*—There are other gentlemen in attendance; but I will not pursue this any further.

#### REPLY.

*Mr. Attorney General.*—Gentlemen of the jury, if that of which my learned friend complains has happened, if any endeavours have been made to prejudice the public mind against Mr. Davison by the circulation of any improper statements of his case, I join with my learned friend in deploring it. I have seen no such publications: I certainly appear as counsel against him without having derived from any such sources, any prejudice against him; and I am perfectly convinced that you are either ignorant of any such publications or, if they have fallen in your way, that you will divest your minds of any effect which they may have produced. I desire only that Mr. Davison's case should have a fair hearing and I re-assert that which I stated when I laid the case before you (and which my learned friend repeated from me), that if there really be any serious doubt in the case, then give Mr. Davison the benefit of that doubt, for innocence ought always to be presumed until guilt is proved.

The character which Mr. Davison has hitherto maintained, and to which honourable testimony has been given by several persons of exalted rank and by others of high estimation in the mercantile world cannot, in a case of this sort, produce any other effect, than that of recalling to our minds the melancholy reflection that men who have obtained the fairest reputation in the world, should not sufficiently value that reputation, to be prevented (especially in transactions with government) from taking such undue advantages of either the negligence or inattention of those whose duty it is to pass their accounts—that, acting upon a belief of the impossibility that their frauds can be detected, they are not deterred by any regard for their character, from the commission of crimes to which they have been tempted by the sordid desire of the gain which may be derived from them. Every man can find friends who will give him a character down to the period when he has ceased to deserve it, and I am afraid that to Mr. Davison, that hour has arrived.

I am in no manner discontented with the view in which my learned friend who is of counsel for Mr. Davison put this case, when he told you that there are two (although I may not agree with him that there are only two) questions for your consideration. He stated to you that those two questions were, first, whether Mr. Davison was entitled to any commission; and, next, whether (supposing Mr. Davison not to have been entitled to any commission) he charged it dishonestly by the fabrication of those false vouchers which I

originally described to you and which have been since given in evidence. I must now call your attention to the circumstances under which Mr. Davison was originally employed in this business, to the manner in which he conducted it, and lastly to the circumstances under which that sort of change (as general De Lancey calls it) took place.

Mr. Davison was originally employed by general De Lancey to supply the barrack department with goods, which he was to purchase from others, and upon which he was to be allowed two and a half per cent. as commission. This is proved by the letter which general De Lancey wrote to Mr. Davison and by Mr. Davison's answer, which letters, general De Lancey tells you, form the agreement under which he was first employed. Mark how the deviation first arose. There is no complaint from any one, except Mr. Davison, that the supplies cannot be continued upon the same scale as they have been rendered before; but from Mr. Davison's representation general De Lancey is induced to believe that there is a difficulty in obtaining from the market the supplies requisite for the public service. Seeing that the supplies had gone on without any complaint, from the year 1794, till the year 1798, during which period Mr. Darby, whose name has been so often mentioned to you, was the principal furnisher of the supplies, how happens it, that general De Lancey did not inquire of Mr. Darby, whether he was incapable of continuing to furnish the supplies for the future? By the accounts I find that in 1795, Mr. Darby furnished stores to the amount of nearly fifty five thousand pounds; that in 1796, he furnished stores to the amount of upwards of 80,000*l.*; that he supplied all the stores (which, however, were to no large amount) that were rendered in 1797; and then on a sudden I find in 1798, a statement by Mr. Davison that there is a difficulty in procuring these supplies. Gentlemen, there was no difficulty at all; and the only reason for that representation so made by Mr. Davison to general De Lancey was, that Mr. Davison, not satisfied with the commission which he drew upon the supplies rendered through him as agent, by others, was desirous of appropriating to himself also the merchant's profit upon the sale of these supplies, and therefore he deprives Mr. Darby of a large portion of this business which he was perfectly able and willing to have continued, and took upon himself the supply of those articles which until that period had been furnished by Mr. Darby. That this was so, appears most clearly, by the subsequent evidence, whereby it was proved, that Mr. Darby complained to Mr. Davison of his having been excluded from a part of the business, which he could have performed, and that he questioned him in a dissatisfied tone as to the price which he charged for these articles: I admit that Mr. Darby said, that Mr. Davison's rates of charge

were too low; but you will recollect that the former prices of Mr. Darby had been settled by Mr. Davison himself, and that Mr. Davison had at this time an interest in rendering them a little below Mr. Darby's prices, that he might secure the whole profit to himself.

Under these circumstances we find Mr. Darby supplanted by Mr. Davison, a person who not only receives commission upon all goods supplied by others, but also from this period upon the stores which he himself supplies, and by the sale of which he also obtains the seller's profit. Was he entitled to commission upon the goods so sold by himself, is one of the questions which, according to my learned friend, you are to answer: and your answer is to be drawn from the evidence, which has been given this day. I answer, in the words of the defendant's witness, general De Lancey, that it would have been a gross dereliction of his duty to the public, a scandalous breach of the trust which that public reposed in him, to have agreed with Mr. Davison, that he should charge commission upon those goods which he supplied from his own stores. That is the opinion entertained by general De Lancey of the conduct of a barrack-master-general, who should agree that Mr. Davison should receive this commission.—Such is the opinion of general De Lancey, the witness whom Mr. Davison calls to prove that he (general De Lancey) agreed with Mr. Davison that he should draw this commission. I ask you whether, after that evidence, you can entertain a moment's doubt on the right that Mr. Davison had to charge that? But this indeed is a question of law, a question which I will not argue before his lordship; because I know he must tell you, that no counsel, no attorney, no attorney's clerk could, upon the face of this letter, and these accounts, entertain a doubt that Mr. Davison was not entitled to charge this commission. If you add to this letter any thing which passed subsequently: if you take the conversation with general De Lancey, that gentleman tells you, that he, not only did not agree to Mr. Davison's taking this commission, but that he should have thought he had disgraced himself and betrayed his duty to the public, if he had entered into any such agreement as that which Mr. Davison asserts to-day he did enter into with him. So much for the right to charge this commission.

Let us now examine the more material question, namely, whether he charged this commission dishonestly? Whether he believed himself entitled to it, although in fact he was not, and the fault was in those who allowed it to him? Or whether the fault was in him, who brought forward the charge in a fraudulent and covert manner, and who so well secured its fallacy from detection that he prevailed upon the public officers to allow him a commission, which they would have disallowed if they had known the truth, he knowing the

truth, and that it excluded him from all right to commission.

I am obliged to remind you, gentlemen, of facts which may easily have escaped your recollection in the course of this long trial. You remember that all the goods passed through the hands of Mr. Lodge, the packer, and that he made out an half-yearly account of all the goods which so passed through his hands to the several barracks; bear in mind too that Mungo Shedden was well known to be the manager of Mr. Davison's Bedford-street-warehouse.

Mr. Lodge being the person through whose hands these goods passed, and who sent half-yearly accounts to Mr. Davison; and Mungo Shedden being the manager of the Bedford-street warehouse, and rendering the goods furnished by Mr. Davison to Mr. Lodge; the return which Mr. Lodge makes to Mr. Davison is in the name of Mr. Shedden: the goods appear to have come from Mr. Shedden, which Mr. Lodge's man says, he knew perfectly well, came from Mr. Davison's own warehouse; that furnishes the main topic of my learned friend's argument, namely, that the publicity of the affair shewed that Mr. Davison could not intend any fraud. That publicity however, is applied to a wrong part of the transaction: there was no reason to conceal this from Mr. Lodge, because Mr. Lodge neither knew what the agreement between the barrack-office and Mr. Davison was, nor did he know how it was to be carried into execution, nor how Mr. Davison's accounts were to be made out. There was, therefore, no reason to conceal from Mr. Lodge that these goods came from Mr. Davison's stores. But you will recollect not only that Mr. Lodge makes a return to Mr. Davison, but also that Mr. Davison makes a return to the barrack-office. Let us see under what name Mr. Davison returns to the barrack-office, those goods which Mr. Lodge returns to him under the name of Shedden. When you look at Mr. Davison's account with the barrack-office you find—and this is a most material point in the case, the name of Watson substituted for the name of Shedden: you find that they are accounted for to the barrack-office as being goods purchased by Mr. Davison of a Mr. Watson, whereas they had been consigned to Mr. Lodge as from Shedden. Why should these changes have been made? Why should the name of Shedden have been sent to Mr. Lodge, and why should it not have been sent to the barrack-office? For this plain reason, that it was of no consequence to Mr. Davison, whether Mr. Lodge knew the fact or not, but if any account containing the name of Shedden, had been sent to the barrack-office, Mr. Shedden, being notoriously the servant of Mr. Davison, the accountants would have seen that the goods were his own, and would have disallowed his charge for commission. For that reason was Watson's name substituted for Shedden's, and with this singular circumstance, that in the

first half-yearly account in which it occurs, it is written on an erasure, and I have no doubt that the name of Shedden was first written and that in consequence of the danger of using that name having occurred to Mr. Davison, he substituted the name of Watson.

It does appear to me that the using this false name, the sending in an account of the goods as if purchased from Watson, the producing receipts (all of them false) as if given by Watson to Mr. Davison, for the price of these goods, incontrovertibly proves that Mr. Davison meant to conceal from the barrack-office the circumstance of these being his own goods, in order that, by inducing them to believe that these were not his own goods, but the goods of another dealer, sold to him as agent to the public, he might be enabled to charge his commission. Now the question in this case is, whether he did not intend by means of these documents to produce that effect? Can any other reason be assigned for this mode of proceeding? Has his counsel, has any one of his witnesses, been able to assign for him any reason why the name of Watson (a non-existent person as to this transaction), and why the name of Allen (an equally non-existent person), should have been affixed to these goods, unless for the purpose of enabling Mr. Davison to charge the commission? One gentleman volunteers this hard duty: Mr. Bowring, Mr. Davison's clerk, comes forward to give you a satisfactory account of this whole transaction; he tells you, that he can explain it on behalf of Mr. Davison; that he can shew you that no fraud was intended, and that he can shew you how, a mistake having taken place, it was intended to rectify that mistake, and can explain why it was not rectified. I will take his whole account, and reserve the material parts, upon which he is flatly contradicted, for my observations. He says "the reason why we substituted these names of Watson, and Allen was, that I said to Mr. Davison, how strange it will be for you to sell goods to yourself; it will be an unintelligible account, if you give receipts for money to yourself; such a transaction was never heard of, and therefore, some plan must be devised to put this into a different form; and the plan we hit upon was, the making out bills of parcels, and getting receipts in the names of Watson and Allen, a mere form." Mr. Bowring tells you, it was done merely as a matter of form; but I cannot help observing that they also go through the form of paying the price of a stamp on the receipt for each of these invoices. Now if it had been a "mere form" I should think that they would hardly have put themselves to this expense and trouble; but if it was meant to be in appearance a real, though it was in fact a fictitious transaction, then the purchase of the stamp was obviously necessary.

But, gentlemen, if it was not meant to conceal the real nature of these transactions between the years 1797 and 1803, why was not the same course pursued afterwards when Mr.

Davison did not mean to charge, and in point of fact did not charge any commission? From the beginning of 1803 downwards, Mr. Davison professed that he would not charge commission. At that period commenced a very accurate inquiry into the accounts of public accountants; at that period Mr. Davison seems to have taken the alarm; and from that period he states his accounts in the same form in which he might have stated them at first, and in which he would have stated them at first, if he had not meant to practise any deception. With respect to the goods furnished by himself these bills of parcels state, Alexander Davison, debtor to the Bedford-street house, so much; and receipt is signed by Shedden on account of the Bedford-street house, from Alexander Davison. There is no mystery in this mode of keeping the accounts; there was no difficulty in arranging it; it was that which immediately occurred to the minds of Mr. Davison and Mr. Bowring, as soon as they lost sight of charging commission. "Well but," says Bowring, "this was merely an error; Mr. Davison thought he was entitled to charge the commission, but it was the scrupulousness of my conscience that alarmed him, for in 1803 I suggested to him that there might be a doubt about this commission. "Well then," says Mr. Davison, "if there be a doubt, I had rather err on the right side: get the accounts back, and we will correct them." Now, you will find, that Mr. Bowring has built a false story upon a true transaction; for it certainly is true, that he went to Mr. Stanbank, and desired to have the accounts back, for the purpose of making corrections in them; but it as certainly is false that he stated to Mr. Stanbank that what he wanted to correct was, the charge of commission, and that he wanted to withdraw that charge from the account. He has therefore done that which men who intend to give a false colour to a transaction very frequently do—they take a true fact as to the foundation upon which they build their own falsehood; he went to Mr. Stanbank, he did desire to have these accounts returned, he desired it in order that he might correct them; he had reason to desire it, because, besides that, there were several other gross errors in the accounts which they knew were ripe for detection. Instead of getting back the accounts, which Mr. Stanbank said he could not return to them, they are advised by Mr. Stanbank to correct those errors by a supplemental account; they accordingly did afterwards send in a supplemental account in which they corrected errors, giving credit to government for 15,000*l*. That then was the purpose for which Bowring really wanted the account returned, that was the correction which he really meant to insert in it; it was that correction which Mr. Stanbank advised him to make by rendering a supplemental account; it was that correction which they actually did effect by rendering a supplemental account, in which they credited government with the amount of all those errors.

I now beg of you to judge of the credit due to Mr. Bowring, and to consider whether my view of the transaction is not confirmed by what I am about to state to you. Bowring's evidence was worth nothing if he did not swear that he informed Mr. Stanbank that his object in getting back the accounts was, to correct them by withdrawing the charge of commission; he, therefore, swore that that was his object, and that he told Mr. Stanbank that that was his object. Mr. Stanbank was examined by my learned friend as to all that Mr. Bowring had said to him; he stated all that he recollected; he did not say any thing about commission, and therefore I did not think it necessary to ask him whether any thing passed upon the subject of commission, but his lordship asked him, expressly and emphatically, "Did Mr. Bowring tell you that the purpose for which he wanted to get back the account was, to withdraw the charge of commission?"—And Mr. Stanbank's answer was "No, most certainly not." So that Mr. Stanbank is most positive that Mr. Bowring did not assign that as a reason for getting back the accounts; and it is proved to you, that there were in the accounts other errors which needed correction, and on account of which he did render a supplemental account wherein he struck off charges to the amount of 15,479*l*.

Besides this, look to the absurdity (I may say, the impossibility of the truth) of that which Bowring states. He tells you, that he communicated this to Mr. Davison, and that Mr. Davison said "Very well, then you must credit the account of the barrack-master-general with this sum; and you will bear it in your mind and send it in in a subsequent account." An occurrence so remarkable as this having been stated to have taken place in 1802, consider, gentlemen, what were the subsequent transactions which have been disclosed to you. Mr. Davison has been questioned upon the inaccuracy of his accounts; he has been questioned upon imputed overcharges; he has been examined before the commissioners of military inquiry; he has been required to give a more particular detail of many articles in his accounts, which were complained of and which were matters of suspicion; and he has had opportunities presented to him of correcting any mistakes which he might theretofore have made—and here let me entreat your attention. I anticipated to a certain extent the defence which has been set up, and in the evidence that I laid before you, you find Mr. Davison, in his examination before the commissioners, swearing, in the most positive and express terms, that he acted upon the agreement contained in the letters of December 1794 and January 1795, and that no new agreement was ever entered into by him and general De Lancey. Now, whatever general De Lancey might have thought upon this subject, even although general De Lancey might have conceived that from what passed between them it could not be inferred, that any new agreement

had been entered into; yet if Mr. Davison did, from what then passed, infer that a new agreement might be presumed, and that he would be considered thereafter as rendering his own stores and charging commission upon them under such presumed new agreement, it is impossible that, when he was called before the commissioners of military enquiry, he should have sworn that no new agreement was entered into.

You will, perhaps, ask how could he swear that with safety, looking forward to the situation in which he stands to day. To which I answer, he never did look forward—certainly not at that time—to his present situation. He thought—and he thought justly—that it had not been discovered, that Watson and Allen were not *bond fide* tradesmen, real sellers of goods; he knew that the documents before the barrack-office were regular; he knew that there stood upon those documents the names of Watson and Allen, as the sellers of the goods; he supposed, therefore, that the fraud never would be detected, and consequently that he could safely swear to that which I have now stated to you, namely, that there never was any new agreement between them. But, surely, if (which is the only excuse now offered for him by Mr. Bowring) this was a mistake, he has had opportunities for rectifying this over and over again. I prepared my learned friend by the evidence I gave in the first place for the answer I should give to this part of the defence. I said, if you shall pretend that this was an error, if you shall pretend that this was an oversight, how happens it that on the 17th of December, 1805, in the course of that same examination, Mr. Davison should have sworn, that he had furnished some goods himself but had charged no commission upon them? Now it is true, as I have proved to you—and this is a most material point for your consideration, to which, therefore, I wish to draw your attention—that, from the year 1803 downwards, he did furnish goods in his own name, and did not charge commission upon them; and in 1805, while his accounts were under investigation, he stated that he had rendered some goods himself, but that upon those goods he had never charged any commission. What do I impute to him to-day? That from 1798 to 1802, he did furnish goods himself upon which he did charge commission, and that he did this by sending in false receipts and false bills of parcels. I thought it at least possible that the defence brought forward would be, that this had escaped Mr. Davison's notice, and I had prepared myself to answer it; but his counsel have answered it for me; for, if their case be true, this had not escaped Mr. Davison's attention; if Mr. Bowring's testimony be true, Mr. Davison was told in 1802 that Mr. Bowring thought it at least doubtful whether he could substantiate his charge to commission; my learned friends have adduced Mr. Bowring to prove that his delicacy raised a doubt in Mr. Davison's mind whether the

charge could or could not be substantiated, that they discussed it together; that they sent to the barrack-office to get back the accounts; that they found they could not get them back from the office, and that they then bethought themselves of another mode of correcting this error, namely, by sending in a supplemental account, and giving credit to the barrack-master-general for the amount of this commission.

So that you see, according to the account Mr. Davison lays before you to-day by his counsel and by his witnesses, this was a matter of long, serious, and anxious deliberation and discussion between his clerk, Mr. Bowring, and himself, and this appears to have been concerning articles upon which he had charged commission, and where the question was as to the returning it. If that be true, is it possible that Mr. Davison should, in 1805, have sworn before the commissioners of military enquiry, that he never had charged commission upon any goods which had been rendered by himself? Is it not clear that Mr. Davison thought he stood in the situation in which I have described him to have stood, namely, that of a man who previously to 1803 had charged commission upon goods which he himself had furnished, but thought that he had so armed himself by the fraudulent vouchers which he had delivered that it was impossible that any exposure should take place?

You will bear in mind that what I am now saying is with reference to the excuse made by Mr. Davison, that this was an error which he wished to have corrected. I say, that if this were so, he would have corrected it in his deposition in 1805, and that he could not have sworn to that which he did swear. But he had a subsequent opportunity. On the 5th of May 1806, he delivered this supplemental account: now will any man gravely tell me, that if that conversation which Mr. Bowring states to have passed between himself and Mr. Davison (in which it was expressed that on a subsequent occasion this should be set right and inserted in a supplemental account) had actually taken place, it was possible that this supplemental account should have been rendered which must have been extracted from Mr. Davison's own books, and that the person who extracted it from his books (in which the pretended credit was given to the barrack-master-general) should not have added to the othersums the amount of his commission? The thing is utterly incredible—it is impossible. Here there is a second opportunity of setting right his error (if it was one) which presented itself to Mr. Davison, at which his attention was called to it, and at which he did not set it right, but did that which confirms my statement, that he never intended to set it right.

It did not end there; for, on the 19th of May, 1806, he retired within the trenches of his settled account. That supplemental account turned the balance against him and occasioned a balance of 6047*l.* 17*s.* 11*d.* to be due from him to the public, which sum, on



the 15th May, 1806, he paid in. And when, at a subsequent time, he was called upon to render a cash account to the commissioners, he retired behind the defence of this which he calls a "settled account." He states that his account has been rendered, examined, settled and balanced, and the balance paid, and that, therefore, they have no right to call upon him for any account whatever. How is that consistent with his defence? His defence to-day is, that this was an error (thought of in 1802), upon which a long and anxious discussion took place between him and Mr. Bowring, and which they resolved to set right upon a future occasion: and yet when he sends in his supplemental account, upon which he wishes to fix the character of a final balance, he does not mention this "error," but pays in the other sums due from him to government; and when afterwards called upon for a cash account, so completely does he hold at arm's length those who call upon him, that he says, you have nothing to do with me; I have settled with government, and the balance has been paid by me.

Now, if this was an error, after these three opportunities of setting it right had been not only suffered to pass by, but on which the conduct of Mr. Davison had been utterly inconsistent with an intention of rectifying such supposed error, how can it possibly be pretended by any man that this was an error, and one which Mr. Davison up to that time intended to correct? If then it was not an error, which he intended to correct, what was it? I am afraid, that I must give to it the appellation of a gross fraud. Mr. Davison had entered into a contract to supply government with goods which he was to purchase, and upon the price of which he was to receive a commission. He afterwards, not I think by the fairest means, obtained from general De Lancey permission to supply goods from his own stores, *i. e.* to change the character of agent upon commission for that of merchant—to take the profit of a merchant (which is probably ten times but certainly six times greater than the other) in lieu of the profit of agent upon commission. But with that he was not satisfied; he knew (for this his conduct demonstrates) that upon those goods which he himself supplied he was not entitled to charge commission; he knew that the charge of commission upon them would never be submitted to, unless he could disguise the circumstance of their being sold by himself, and therefore he sent them in, accompanied by false bills of parcels in the names of Watson and Allen his clerks, and by false receipts from Watson and Allen for sums which they never received, in order that when these vouchers should get into the hands (not of general De Lancey but) of the accountant who was to examine them, and who knew nothing of the circumstance of his having himself furnished goods, that accountant might allow him the commission, and, the accountant having allowed him the commission, that general

De Lancey might sign his approbation of the account.

An endeavour was used to induce you to believe that, in settling these accounts, general De Lancey had under his eye the charge of commission upon the goods supplied by Mr. Davison himself. The way in which it was attempted to convince you of that was this, that general De Lancey had given leave to Mr. Davison to supply some goods himself, and knew that he supplied them; that general De Lancey allowed commission upon all, and that, therefore, it must be evident that he authorized commission upon these as well as upon the rest. Gentlemen, that was not so. The abstracts charged the prices of the goods and the commission thereupon; and at the bottom of each abstract is stated the sum total of the prices of the goods contained therein and of the commission; in the abstracts, therefore, the commission appeared; the sum total of each abstract includes the charge of commission. The sum total of each abstract is afterwards carried into the general account. That general account is allowed and signed by general De Lancey, and in it are comprehended all the charges for commission; but these do not meet the eye, for that general account consists merely of all the sums total of the several abstracts, but does not set forth the abstracts themselves in which alone the charge of commission is specifically stated. For instance, if the supplies are 600*l.* and the charge of commission be 50*l.* there are stated in the abstract the sums which compose the 600*l.* after which follows the charge of commission upon them, 50*l.* and then the whole being summed up gives the total 650*l.* But in the general account it only appears as a dry sum of 650*l.*: it was therefore a fallacy in my learned friend to allege, that because general De Lancey had passed the half-yearly accounts which comprehended, but not specifically, the commission upon all the goods rendered, he therefore had sanctioned the charge of commission upon all the goods rendered. The fact is, that all these accounts were sent to Mr. Stanbank, who considered them all regular, because he thought Watson and Allen were real sellers; he therefore approved the abstract, and transmitted the general account to general De Lancey who approved that, seeing that it was correctly cast up, and that the more specific account had received the approbation of Mr. Stanbank.

I have thought it necessary to go into this explanation, in order to free general De Lancey from the imputation (which must otherwise have attached to him), that knowing that this charge should not have been made, he nevertheless had suffered it to remain in an account approved by him: the truth is, that his approbation was not accompanied with the knowledge that commission had been charged.

I am fully aware that this very clear case did not require so long an address from me to you, after the evidence had been gone

through; but it is a case of great public concernment; it is assuredly of great importance, that when fraudulent practices of this sort have been detected, the means by which they have been carried into execution should be publicly exposed. It is not a trivial case with reference to the effects which it will produce for the advantage of the nation. I shall not hereafter have any opportunity to point out to you in what particular instances the public money shall have been saved by the detection of the fraud in this single case, but depend upon it, that if a fraud of this sort should pass unnoticed or unpunished, the consequence would be, that ten thousand others would be committed, in anticipation of the same impunity. With this remark I leave the case in your hands, perfectly convinced that you must, by the cogency of the evidence which has been laid before you, be driven to the conclusion, drawn by the information from the facts which it alleges, that Mr. Davison did, with intent to procure to himself an undue commission, and with a fraudulent purpose, deliver these false bills of parcels and receipts to the barrack-office, and thereby acquire to himself these unlawful gains.

## SUMMING-UP.

Lord *Ellenborough*.—Gentlemen of the jury; the arguments and the evidence on behalf of the prosecution, as well as those on behalf of the defendant, being now concluded, it remains for you to discharge the painful duty which that evidence and those arguments impose upon you. In a cause of such peculiar moment to the accused, whose character and future situation in life it must most deeply affect, in a cause too which materially concerns the best interests of the public, it will be incumbent upon me to detain you, by a more enlarged statement of the evidence than is usually considered necessary; but the paramount importance of the present case requires me to do so.

The information alleges, that at a certain time, in the year 1797, the defendant was employed on behalf of his majesty, to purchase barrack stores, for the use of his majesty's military forces, as an agent, for a certain commission, to wit, a commission of two and a half per cent, upon the amount of the prices of the stores to be purchased,—that has been proved by unquestionable evidence—which commission was to be the sole emolument to be received by the said *Alexander Davison*, in that behalf. You will recollect that the contract was entered into between general De Lancey on the one side and Mr. Davison on the other, by a letter from general De Lancey to Mr. Davison, in which he proposes terms, and by the answer from Mr. Davison in which he accedes to those terms, and in which he uses the expression, that the commission of two and a half per cent, was to be the sole compensation received by him for executing that business which is stated in the letter, and this was not

a compensation for the purchases merely, as the learned counsel represented it, but for the whole business in respect of the agency which is described in that letter, and which agency was, for the purchase of military stores, and upon such terms as similar agencies are usually conducted:—Indeed I believe that in almost all circumstances it is incidental to agency to manage insurance and all the other matters pointed out in that letter.

It is then stated, *that the defendant, being employed as such agent, for such commission, delivered, for the use of the military forces, barrack stores, to the amount of 15,136l. 9s. 9d., as stores which had been purchased by him as such agent, for such commission, which said stores so delivered were not purchased by him, as such agent, but were made and manufactured by, and were the property of, the defendant himself.* Upon this there is no doubt; the evidence on both sides equally tends to prove, that those stores which were delivered during the period commencing at the end of 1797, or the beginning of 1798 and terminating in 1802 or 1803 (which I shall more accurately state hereafter), were certainly supplied from the defendant's house in Bedford-street: this is proved by unquestionable evidence.

I will now direct your attention to the main point for your consideration, namely, the question of *Fraud*. It is thus charged: *And that he did deliver, in the office of Oliver De Lancey, esq. he being then barrack-master-general, certain false, fraudulent, and deceitful paper writings, as proofs and vouchers that he had purchased those stores of one George Watson;* the information then states the nature and particulars of those paper writings. Now, that the defendant did produce false papers of this sort, is likewise incontrovertibly proved by the evidence of both parties; for nobody pretends to say, that the papers which represented Allen to have received for Watson money in payment of stores furnished to Mr. Davison, gave a true account. That these were the stores of Mr. Davison himself, and that the papers were fictitious it has not been attempted to disprove.

The information then charges that *these several papers were produced for the purpose of procuring and as a means of fraudulently procuring the barrack-master general to allow to the defendant the sum of 378l. 8s. 3d. for his commission, as agent, on the sum of 15,136l. 9s. 9d. so stated to have been paid for these stores.* Now, that he procured money by means of them, there is no doubt. That money to this amount and to the amounts mentioned in the other counts, as commission upon the supposed purchases from others in his character of agent, was received there is no doubt; and no evidence of the contrary has been attempted to be given.

Here arises the question, whether these were fraudulently produced in order to procure this commission to be allowed to the defendant by general De Lancey. At first sight we can hardly conceive an untrue voucher to be produced for any other than a fraudulent purpose. An honest

end is seldom promoted by dishonest means; and it being ascertained that the vouchers were false, and that they were the means by which the commission might be obtained, for what other purposes, I asked one of the witnesses, could they have been produced, than that of obtaining commission which could not otherwise be procured? And if they were produced for the purpose of obtaining commission that could not otherwise be procured, and if they did obtain it, can you describe such papers by any other appellation than that of fraudulent? or say that they were produced for any other purpose than obtaining the allowance of commission in a case in which commission ought not to have been allowed?

An observation has been made which would have been most important, if it had been warranted by the evidence; the learned counsel, who argued for the defendant with great ability, contended, that although the defendant had been originally employed on behalf of his majesty, as agent upon a commission of two and a half per cent, he did not continue in the same employment on the same terms, but that the original contract had been superseded by a subsequent contract, under which he was authorised to furnish his own stores to the public instead of seeking them elsewhere, and that the same commission was to be allowed upon these supplies as upon the others; the learned counsel said, that a subsequent agreement to this effect had been entered into by general De Lancey. I own that when I heard that statement I felt very great anxiety and alarm; for if general De Lancey had been brought here to swear that which I trusted he would not swear unless it was true, I should have been extremely embarrassed, because the defendant himself had sworn the contrary in that part of his examination before the commissioners of military enquiry which (as you will remember) I interrupted the learned counsel by reading,\* in order to draw his attention to it that he might reconcile the contradiction between the testimony of the defendant in his own cause, if I may so express myself, and the testimony of the witness then about to be called. I did so from an anxious wish that if general De Lancey had then resolved to state that which would be so contrary to the evidence given upon oath by Mr. Davison, he might reconsider the subject and turn it again in his mind. But when general De Lancey was produced, so far was he from showing that the contract originally formed between the parties had been altered, all that his evidence amounted to, was, that on a representation by Mr. Davison of the difficulty of getting supplies elsewhere and the convenience of supplying his own stores, general De Lancey consented that he should make the supply; but he never consented, that, standing in the common situation of a seller, Mr. Davison, should upon his own sales, charge the commission of an agent

buying for the public. This was put emphatically to general De Lancey, and he said he made no such agreement. And it appears that in this the general is borne out, for he did not sign any account in which it appeared that commission was charged upon all supplies, and he may be supposed to have known that parts were still purchased elsewhere.

Now, the subject to which your attention should be directed is this. To return a verdict of guilty, you must be convinced that these false vouchers were issued and produced for the fraudulent purpose of obtaining the allowance of that commission which certainly could not justly be charged by the defendant in his character of an agent, when at the same time he was selling his own goods in his character of merchant. Whether this was done fraudulently, is the narrow question of fact to which your attention is now confined.

The nature of the contract has been proved by the production of general Delancey's letter of December 28th, 1794, and of the defendant's answer thereto. General De Lancey asks him whether "*he would undertake the supply upon a moderate commission.*" He tells him, "a bill of parcels is to be sent to his office as soon as the purchase is made, and the receipts of the person from whom the articles are purchased to be produced by you," most emphatically showing that he was to purchase from some other person. The receipt of the person from whom he had actually purchased was to be produced, and not the receipt of a fictitious dealer from whom he did not actually purchase. "Certificates are also to be produced by you (if required) that the prices charged for the several articles do not exceed the market price at the time the purchase is made;" he then states the manner in which the business is to be conducted, and says "I am to request you will inform me whether you are willing to undertake the business on the terms above-mentioned."

The answer of Mr. Davison is this, "I have received your letter dated 28th December, relative to the supplies that may be required for the service of your department, and desiring to know if I will take upon me the furnishing thereof." That is, the furnishing stores for the barrack department. "Being sensible that this communication is a mark of your confidence, I beg leave, in answer thereto, to inform you, that my house is disposed to undertake the business on the footing which you state, of an agent upon commission." So that, it is distinctly an agency upon commission. The defendant says in a subsequent part of this letter, "you will always, previous to any purchase, be made acquainted with the prices, and all other circumstances, to determine you with respect to the extent and true value thereof." You may remember that on the part of Mr. Davison it was contended that the having sent patterns and prices shewed that he was in those instances dealing as a merchant, as a seller; whereas it is a circumstance expressly pointed out with reference to his employment as an

\* Vide ante, p. 147.

agent, that he was to send patterns and prices in order to enable general De Lancey, to determine with respect to the extent and true value thereof." The prices and patterns being sent, it was not unlikely that the barrack-office might reject some of the articles even when he was acting as agent, and it is most likely that he would make such bargain with the persons from whom he purchased, as should leave him at liberty in that case to return them.

He afterwards says, "I consider a commission of two and a half per cent upon the whole amount (including all per-centages on making insurances, recovering losses, averages, &c., and replacing all damaged or unserviceable articles delivered to barracks within Great Britain), to be what, I trust, you will allow, upon due reflection, but a just and reasonable compensation for executing the business, which I mean and intend shall be *bona fide* the sole emolument that I shall derive therefrom, and whereof proper testimony shall be always forthcoming, when required."

These letters of December, 1794 and January, 1795 form the contract between general De Lancey and Mr. Davison; in compliance with the terms of which, the latter engaged, for the commission of two and a half per cent, to purchase these articles.

The first witness called in support of the prosecution, was Mr. Thomas Bonnor, the secretary to the commissioners of barrack-accounts. He produces from their papers the half-yearly return of bedding provided by Alexander Davison and sent to various barracks, dated June 1796; the return is here, it is from the 25th of December, 1797 to the 24th of June, 1798, and in it appears the name of George Watson; it is produced for the purpose of shewing that the defendant puts him down in the list of persons from whom he has purchased. There are the names of other persons; and opposite to the name of George Watson are certain quantities of goods sold, which appear to tally, in amount, with the bills sent in for payment in his name. With respect to the name of George Watson, it has been observed that it is written on an erasure: I am afraid of founding any material argument upon this circumstance; it does look as if there had been an intention of putting the name of Shedden, or some other name; but I cannot venture to state that it proceeded from any reason but that there had been some other name, or that they had blotted this name in writing it.

William James was next called, who says, "I live with Mr. Lodge, the packer; he was the person to whom the bedding and towels were sent, to be packed for the barracks; on the 24th of June and 25th of December he sent half-yearly accounts to Mr. Davison of the quantities sent to him to be packed, of the quantities he transmitted, and the names of the persons from whom he received the goods." Here the names of the persons sending are written in a line with the articles sent, and here the name of Shedden appears. Shedden, you recollect,

was the upper clerk at the house in Bedford-street, who sent the goods to the House of Mr. Lodge, the packer, who transmitted them to their proper destinations for the service of the barracks. "Mungo Shedden" says this witness, "managed the army business for Mr. Davison at his warehouse in Bedford-street; I knew him in no other character. I know no person of the name of Watson as supplying goods. There was a man of the name of Watson in the warehouse in Bedford-street, of which Shedden was the managing person. Watson could not be above twenty-two or twenty-three years of age, if so much." That could be material only with reference to the probability of his being the person selling—that he, being about the age of twenty three in the year 1800 could not be above twenty-one at the time he was pretended to be the seller of these articles. "I did not know a person of the name of Allen as carrying on business, or furnishing goods to Mr. Davison."

It appears, from the account, that the articles sent to Mr. Lodge in the name of Shedden, were charged for to the barrack department in the name of Watson.

On his cross-examination, the witness is asked whether Mr. Lodge is ill. He says, "he is; he received the bedding and towels from the different tradesmen, and packed and forwarded them; he superintended this business himself. Mr. Davison had an army-clothing warehouse in Bedford-street, the business of which was conducted by Shedden. Mr. Davison was engaged in other extensive concerns. Those goods to which the name of Shedden appears I knew at the time came from Bedford-street. I had known for a considerable time that goods came from Bedford-street which were applied to the execution of the barrack orders. The name of Shedden uniformly occurs with respect to articles of bedding and towels supplied from Bedford-street."

Then was produced Mr. Davison's account of bedding provided during the same period, namely, from the 20th of December, 1797, to the 24th of June, 1798, in which the name of George Watson, No. 10, appears under the title of "Persons of wheat purchased," the No. 10 referring to the abstract in which the particulars are contained, and the sum of 15,186*l.* 9*s.* 9*d.* is charged; and then upon the total of the articles furnished, which amount to 82,360*l.* 6*s.* 11*d.* a commission of two and a half per cent is charged, making together the aggregate sum of 103,194*l.*

It is material to show, that he charges commission upon the goods which passed under the name of George Watson; George Watson being in appearance the seller, whereas in fact he was merely Mr. Davison's clerk, and had no goods to sell.

[His lordship here proceeded to describe the abstracts, the bills of parcels, the receipts, and the other documents which had been given in evidence.]

The examination of Mr. Davison before the commissioners of military enquiry, on December 6th, 1805, was next read. He was then asked specifically, "When did you commence, and when did you cease to provide stores of any kind for the barrack department?" That certainly refers to his character of agent. "I think it was about January, 1795 that I began; I ceased about September 1804." "Were you allowed any, and what, fixed emolument for this service?" The answer is "two and a half per cent." "Have you, or has any person connected with you, received any *douceur*, fee, or emolument from the persons of whom your purchases have been made? No." Then there is question 6, "Was there any other agreement, or any thing in the nature of an agreement, between you and the barrack-master-general, than what is contained in the barrack-master-general's letter to you of the 28th December, 1794, and your answer of the 10th January, 1795?" "There was no other agreement." I waited with extreme anxiety till I heard from general De Lancey that there was no other agreement regulating the agency concern, though there was a permission to make supplies, not charging any commission upon them.

There are several passages which it is not material to state, but there is one part which is material. "During your connection with the barrack-office, were all the articles you provided procured on commission, or were any of them your own?" This embraces the whole period down to 1804. He answers, "There were some articles that were furnished from my army-clothing warehouse; upon these no commission was charged." The date of this examination is December 6th, 1805, and I will now carry you forward to the evidence of Bowring. Bowring states, that in 1802, it occurred to him that the charge of commission for goods supplied by himself, was a charge that ought not in future to be made by Mr. Davison; and, if he is to be believed, it likewise occurred to him as proper to get back from the barrack-office the particular accounts in which those charges had theretofore been made, and in his communications with Mr. Davison, Mr. Davison desired him to bear it in mind, that the correction might be inserted in some future account with the barrack-office, in order that the commission might be returned. You remember the evidence of the other witness, Mr. Stanbank, from which it appeared that there was an application only for the return of some papers, without stating what was the particular object for getting them back, and still less giving any intimation that commission had been improperly charged, and that it was in order to correct that, that the return of the accounts was requested. But if the attention of Mr. Davison was distinctly called to this in 1802, and he was desirous of an opportunity to correct it, under the notion that it was a mistake, and that the commission had been improperly charged, how happens it that we find him in 1805 stating, that some ar-

ticles were furnished from his army-clothing warehouse, and upon these no commission was charged. There were some certainly upon which no commission was charged, namely, those in 1803 and 1804, after he had discontinued the practice: but if he had had that impression which the witness represents him to have had upon his mind, he would have said, "Yes, and I omitted to bring it into the account; there certainly was a sum charged by mistake, which ought to be rectified." But, instead of that, he says, that upon those which he furnished from his army-clothing warehouse, no commission was charged. It is, therefore, open to the observation of Mr. Attorney-general, that on this occasion, when there was a *locus penitentie* afforded, he did not avail himself of the opportunity, neither did he in May, 1806, when he delivered in a rectifying account, nor in November, 1806, when he insisted that the accounts were closed.

The crime of delivering fraudulent vouchers, with a fraudulent purpose having been once committed, it would be no excuse that the party had afterwards endeavoured to rectify it. But it would powerfully affect our feelings if we thought that the party had done all that he could to make reparation; and if we thought that he had never attempted to conceal that which he had by improper avidity obtained, it would strongly incline us to believe, that it was not originally corruptly received. When, however, you find, that after so many notices and so many opportunities of setting it right, it still remains uncorrected, it is for you to say, whether, in the exercise of a sound and reasonable construction of the acts and conduct of the man, you can believe it to be otherwise than that he at first received and at last retained the commission for a fraudulent purpose.

There was, I think, a corrected answer to one of these questions?

Mr. Abbott.—I believe it does not relate to any one of those to which your lordship has adverted.

Lord Ellenborough.—Perhaps I may as well read it. It is a correction of the answer to the 29th question "I now think I had no commission upon the carriage; but it is a thing I cannot exactly remember: whatever it was, it must have been a mere trifle." I do not think this bears at all upon the question.

James, being called again, says, the stores which were purchased were sent direct from the merchant's to Mr. Lodge's warehouse, and were sent from thence to the different barracks.

Mr. Bonnor, being called again, proves the supplemental account signed by the defendant, and brought down to May, 1806. This furnishes extremely important evidence as to intention. If this gentleman was conscious that he had done wrong—and no man could but be conscious of that, when he had adopted the unworthy artifice of false names—if he was conscious that he had made an improper charge in these accounts, and was only uncertain as

to the mode of correcting the mistake, meaning to return the money, what more convenient opportunity could present itself than when he was delivering in a supplementary account? and, if Bowring is to be believed, he meant to make that the subject of a supplementary account. Here is an opportunity afforded to him most conveniently; here are articles corrected, to the amount of 15,479*l.* 9*s.* 11*d.*; how it happened that they had not before been brought to account, we do not know, but they are now placed to the credit of the public; how happened it then that this commission was not brought into the account? Here are losses, averages, and deficiencies of stores recovered, 11,120*l.* 9*s.* 5*d.* and several other items; but although the time to which this account applies includes the period of his accounts in the character of an agent, there is in that supplementary account, no mention of any overcharge for commission. Putting, then, the most candid construction upon the actions of men, can you believe, that it was his determined purpose to bring this to account? and if not, can you bring your minds to believe that he received this commission not fraudulently, but innocently?

The next paper read was the letter from Mr. Davison of November 19th, 1806, which was written after an application for his cash account.

[His lordship read the letter.]

Thus Mr. Davison's mind is again recalled to a subject which, if I rightly deem of the human mind, it never could have forgotten. If a man had been led by imprudence and indiscretion, and not by crime, to the giving false accounts and false names for purchases which never took place, and upon them had founded charges which never ought to have been made, could it have been so completely obliterated from his memory, as that he should not recollect such a circumstance having occurred, so as to have set it right, if it had not been meant to be ultimately retained?

Then there is an account of bedding provided by Alexander Davison, from December 25th, 1802, to June 24th, 1803, in which no commission is charged upon the goods sold by him as a merchant. Now here he adopts a different course of dealing; whether upon the suggestion of this clerk, or for what other reason, we do not know; but he concludes himself, that he has no right to charge any commission, for upon so much as is sold by himself he deducts the commission, charging the commission of two and a half per cent upon the amount which he states to be the difference between the whole, and those goods which had been sold by himself, and upon which he thought he ought not to charge commission, clearly showing by the explanation which he himself gives, that he considered himself not entitled to charge commission upon those goods which he supplied from his own warehouse.

It was then stated, and admitted, to save the

necessity of going into other proof, that as to the other seven half-years, down to June, 1802, (two only out of the nine having been gone into), the account delivered by Mr. Davison, and the abstract delivered with it applied the name of Watson to the same articles which in Mr. Lodge's account with Mr. Davison, appeared under the name of Shedden, and that, in fact, the other accounts showed a similar charge upon similar articles. This was not attempted to be denied. The receipts for all these articles signed in the same way, Allen for Watson, as upon a sale of goods to Mr. Davison, were also proved. Then John Allen was called.

[His lordship here stated and commented upon the evidence of John Allen.]

This was the evidence on the part of the prosecution, by which it was proved that there were false accounts, in which commission had been charged upon goods furnished under the names of Watson and Allen, but which were actually the goods of Mr. Davison.

For the defendant it was contended, principally, that there was a new agreement entered into, which would put an end to the old agreement; that the charge in the information applied to the terms stated in the letters of 1794 and 1795, by which the contract between the parties was originally formed; and that if there was a perfectly new contract entered into, by which the terms of the old were superseded, it would not only go to falsify the charge in the information, but would do more, for that it would render lawful what was done by general De Lancey. If general De Lancey had been privy to and had authorized an altered state of the contract, it might have been a very serious question whether the contract in writing was to be looked to, or a contract of another sort, formed, perhaps, without any adequate warrant, on the part of general De Lancey. If this had been so, it might have borne a very untoward aspect, as a sort of conspiracy between an ostensible officer of the government and the person employed by him. But that colour does not belong to the transaction; because, upon the evidence of general De Lancey, it appears that he never did away the first agreement, and that he only, from the urgency of the case, authorized Mr. Davison to supply his own articles, never understanding that he was to charge commission upon them.

[His lordship here proceeded to sum up and observe upon the evidence of general De Lancey.]

The next witness called on behalf of the defendant was John Bowring, who was book-keeper to Mr. Davison during the whole time that he supplied the barrack-office with stores.

[His lordship here proceeded to sum up Bowring's evidence; he animadverted upon one part of this witness's testimony as follows.]

"I spoke to Mr. Davison about altering the

accounts; I had some doubts in my mind whether it would be admitted, and I advised him not to let commission stand as a charge; in stating the account, I had some doubt whether the charge was consistent with right or not. I believed at the outset that it was a regular charge." Now, how can a witness expect belief when he states that he thought that a regular charge which, in order to make regular, he must have a falsification of the instrument by which it was to be supported, and must state that one man had sold to another who had never sold to him, and that another was receiving money for a person for whom he never was receiving money? How he could have thought that a regular charge should be sustained by such means, or how he should at one time think it a regular charge, and at another time not, one can hardly suppose with all the candour one would wish to feel towards this person.

He proceeds, "Mr. Davison said upon that, 'well then get the accounts back; and make 'the proper alteration: if I am to err, I would 'rather err on the right side.' I applied 'almost immediately to Mr. Stanbank for the 'accounts.'" Now, if he had been confirmed substantially by Mr. Stanbank, that he applied to him for these papers, for the correction of the error, and disclosed to him something of the nature of it (the means, the degrading means by which it had been effected, one should hardly expect him to disclose), one should have given some credit to him. But all that he states to Mr. Stanbank, is, that he wants back some accounts; which might be the accounts in which the error of 15,000*l.* was discovered and corrected. How it is possible to give him credit, I confess I cannot conceive, when he stands so unconfirmed by the person who was next called. "Mr. Stanbank was the accountant of the office. This was at the latter end of 1802 or the beginning of 1803. Mr. Stanbank said, he could not let me have them. I inquired twice." Mr. Stanbank says, but once. "The second time I applied to him I told him what I wanted them for." To that Mr. Stanbank gives a positive denial, and states that he never mentioned the particular error he wanted to correct. "I told Mr. Stanbank the purpose for which I wanted them; he said, as they cannot be corrected upon the face of the accounts, let a credit be given in some future account. I asked him what account he meant; and he said in any future account current. I told Mr. Davison this; and he said, keep it in mind and let it be credited in the account of the barrack-master-general. Afterwards there was another form used, *Alexander Davison, Dr. to or bought of, the Bedford-street warehouse*. No commission was charged in those subsequent accounts. The deduction of that which had been charged was intended to be made a credit in the account current with the barrack-master-general. There was no account current sent in, in which it was inserted." If there had been it would

have been a strong support of what this man says. There had been a large correction, 15,000*l.* in May, 1806; another opportunity was offered at a subsequent time, when the latter of November, 1806 was sent; and on Mr. Davison's examination before the military commissioners, when his attention was specifically called to the matter, if he had an intention of doing right, he might have purged his mind of that secret which lay in his bosom, and have disclosed the improper charge. But no action was taken of it. He says, "it was omitted afterwards in a supplemental account; that was an omission on my part; the account was made up in haste; I had been unwell for some time, and had some imperfection in my eye-sight."

[His lordship then proceeded to read Bowring's evidence without making any particular comment, until he came to the following passage.]

"Mr. Davison directed me to get the receipts and bills of parcels made out in the name of Watson and subsequently in the name of Allen, as a matter of form." How can a man who wishes to have any estimation in a court of justice, state that the falsification of an important document upon which so much is to be paid, is only a matter of form, the circumstances under which it was framed being thereby concealed from the persons to whom the document was tendered. He says, "I communicated Mr. Davison's directions to Mr. Watson or Mr. Shedden. I remember that the accounts came back from the barrack-office to have the abstracts put up in a different manner; the first receipts by Allen were signed at a subsequent period, in 1801, I think; in consequence of the accounts coming back, several of them, that is to say, three or four half-year's receipts were made out at the same time: this was in order to comply with the forms of the barrack-office. Mr. Davison, seeing the inconsistency of bills of parcels, *Alexander Davison bought of Alexander Davison*, said, the voucher is of no consequence, because the prices are agreed on." But it was extremely material whether it should be reported by the barrack-office as a purchase by him as agent, upon which commission was due, or not. A change was afterwards made, in 1802, and then *Alexander Davison was made debtor to Bedford-street house*: now, as it was practicable to make that charge in that way, and make him buyer and seller, why it was not done at first seems to puzzle all human ingenuity.

[His lordship then stated the remainder of the evidence of Bowring, and the whole of the evidence of Mr. Stanbank, without making any particular observations.]

This is the whole of the evidence as to the substance of the charge. What follows is evidence, highly important if the case be at all doubtful, if it hangs in even scales. If you do

not know which way to decide, character should have an effect: but it is otherwise in cases which are clear. If it could be permitted to operate where a crime is clearly proved, it would always be brought forward; because there is hardly any one who has not at some time maintained a good character. That which you have heard upon the present occasion proceeds from the most respectable sources.

[His lordship then summed up the remainder of the evidence for the defendant.]

This is the whole of the evidence on the subject of character. As I have already stated to you, if the evidence were in even balance, character should make it preponderate in favour of a defendant; but in order to let character have its operation, the case must be reduced to that situation. You will consider whether, after having heard this evidence, you can say that Mr. Davison, at the time when these accounts, false as they are admitted, and proved to be, were made out, in which purchases are stated to have been made by him, as agent, from his clerks, and sums are stated to have been paid that never were paid—accounts which were sent in to the barrack-board, and upon which they (being ignorant that he had acted as a person supplying and not as an agent) allowed him commission, could have done this for any other than a fraudulent purpose? considering that up to this moment with so many opportunities of correcting his error (if error it was) he has not corrected it.

You have a very anxious and painful duty to discharge: it is certainly most distressing to be obliged to pronounce a judgment affecting, so deeply, persons who have occupied a respectable situation in society; but painful as this duty is, you must discharge it manfully. You must recollect the paramount duty which you owe to the public, to protect them from being defrauded by false accounts, and by schemes, such as, if you believe the evidence, and draw the conclusion of fraud from it, the defendant has been guilty of. Whether he has been so guilty, it is for you to determine.

[The Jury withdrew to consider of their verdict.]

Mr. Dallas.—Will your lordship give me leave to draw your attention to the specific form in which I put the case as to the contract? The information states that, as an agent, Mr. Davison was employed for a certain commission of two and a half per cent, which was to be his only emolument.

Lord Ellenborough.—I perfectly understand you, but if you look to the whole, you will see that agency is a term applying to the whole. But you will have an opportunity of considering that.

Mr. Dallas.—The agreement given in evidence allows a commission of two and a half per cent upon the prices, and two and a half per cent, beyond that, on making insurances, recovering losses, averages, &c.

Lord Ellenborough.—Not two and a half per cent, ultra?

Mr. Dallas.—Yes; that is the way in which I put it. That the contract given in evidence varies from the information.

Lord Ellenborough.—He was to have but two and a half per cent on his purchases.

Mr. Dallas.—My objection is, that there is a variance between the agreement given in evidence, and the agreement stated in the information, inasmuch as upon the agreement, that was not to be his sole emolument.

Lord Ellenborough.—I think it was to be his sole emolument in the business of an agent.

Mr. Dallas.—If your lordship will recollect, I have stated that beyond the commission upon the prices he had a further emolument, which was varied afterwards.

Mr. Harrison.—The words are these: “a commission of two and a half per cent upon the whole amount including all percentages upon making insurances, recovering losses,” and so forth; therefore it is a percentage upon a much larger sum.

Lord Ellenborough.—The two and a half per cent is for that business which is the subject of this letter, &c. acting as an agent. If there be any thing in your objection, you will have the benefit of it: I will recollect that you have stated it.

Mr. Holroyd.—The information charges it to be a commission on the amount of the prices; the agreement goes to a commission not only on the amount of the prices of the purchases, but upon other sums.

Lord Ellenborough.—I will consider it, certainly, but I think that is all that he was to have on that account. The words of the information are “which commission was to be the sole commission received upon that behalf?” what behalf? Why, the amount of the purchases.

Mr. Dallas.—It is so upon the information, undoubtedly, but my objection is, that the agreement differs from that. The information confines the two and a half per cent to the prices; the contract is, that he shall have two and a half per cent upon the prices of the articles purchased, and two and a half per cent upon the other charges; and, therefore, I submit, that the contract given in evidence is different from the contract stated in the information.

Lord Ellenborough.—I think it is not. If there be two and a half per cent referable to this particular service, though there might be another two and a half per cent referable to other subjects, that would not be a variance. We considered that in a case, not long ago, where it was held that it was enough to state as much of the consideration as applied to the



subject in question. If you are to have two pounds for one service, three for a second, and two for a third, it is not necessary to state the whole. If there is any validity in your objection, you will have the benefit of it.

Mr. Dallas.—Supposing it shall turn out that Mr. Davison was not entitled to any commission as agent upon those goods he supplied himself, being bound to insure them, till they came to the barracks, it is not merely a formal, but a substantial variance.

Mr. Attorney General.—If that new agreement had been entered into which Mr. Dallas suggested, that Mr. Davison was to receive some remuneration upon the goods he furnished from his own stores, there can be no doubt that the old agreement remained as to the goods he bought from others; and the fraud charged upon him is, that having entered into that agreement as to the goods bought of others, he delivered goods which he actually sold himself, and pretended that, acting under the first agreement, he had procured them from others, and put in false documents to make it appear that he had procured them of others.

Lord Ellenborough.—Yes; but Mr. Dallas does not comment upon the change from the old to the new agreement: he says that the old agreement is not such as you have stated.

Mr. Attorney General.—There I return to the ground your lordship took, that it is enough to state the consideration which applies to that part.

Lord Ellenborough.—If there is an agreement for so much for carrying goods from A. to B. and so much for this service, and so much for that service, it is enough to state so much of the contract as relates to the particular service in question.

Mr. Dallas.—Yes; but it appears from the agreement that Mr. Davison was entitled to two and a half per cent upon the purchases, and two and a half per cent on something else, but the information states the two and a half per cent upon the purchases as the only emolument he was to gain.

Lord Ellenborough.—It strikes me as I have stated. If you are grounded in your objection, you will have the benefit of it hereafter.

The jury returned into court with a verdict finding the defendant—Guilty.

*Court of King's Bench, 6th February, 49 Geo. 3,  
A. D. 1809.*

Mr. Attorney General.—I move your lordships for the judgment of the Court upon Alexander Davison, esq.

Lord Ellenborough, after reading his report of the case, added, there was an objection mentioned, which, as it has not been made the subject of any motion, I suppose I need not state.

Mr. Dallas.—No, my lord.

Lord Ellenborough.—Upon this evidence the jury found the defendant Guilty.

The following affidavits were read on behalf of the defendant:

The affidavit of *John Lodge*, of Garlick-hill, packer, stating that he, the deponent, was employed by the defendant, Alexander Davison, as packer to the barrack-office, from the year 1794 to 1804. That in this situation he had many opportunities of observing the conduct of said defendant, with regard to supplying the barracks with stores, and that he always appeared to show much anxiety and solicitude to procure them upon the best terms the nature of the service would admit, and used much exertion towards obtaining them with the necessary dispatch. That, notwithstanding the demands were frequently urgent and very extensive, he never heard that any disappointment was experienced by delay in the execution of the orders, or otherwise. That he verily believes that the supply made by the said defendant from his own stores was calculated to, and did keep down, the price of the articles so supplied, and that he believes the same was beneficial to and a saving to the public.

The affidavit of *John Stanbank*, of Brixton, in the county of Surrey, esq., stating that he was accountant to the barrack-office in the year 1802, and continued accountant from that time until he was directed to apply himself solely to the making up of the accounts of general De Lancey. That he first became acquainted with the circumstance of a commission upon articles furnished by said Alexander Davison, being charged in the several half-yearly accounts delivered into the barrack-office for the half-years from December, 1797 to June, 1802, some time in the year 1803 or 1804, as near as deponent can recollect, in point of time, and which circumstance, as this deponent believes, was first communicated to him by said Alexander Davison. And that he, the deponent, about that period, or soon afterwards, understood from said Alexander Davison, or John Bowring, the book-keeper of said Alexander Davison, and had reason to believe that it was intended that such commission should be credited to the barrack-office in some account of the said Alexander Davison. That he did, in consequence thereof, actually suppose that the same had been so credited, and deponent is confirmed in this by his perfect recollection of a conversation with general De Lancey, very early in the year 1808, upon the subject of this commission, in which deponent then assured said general De Lancey that such commission had been actually credited, in some account of the said Alexander Davison with the said general De Lancey; and that deponent was surprised, upon looking at the accounts afterwards, to find that it was not credited, and that he had misinformed the said general De Lancey as to that circumstance.

Lord *Ellenborough*.—This is the same person who was examined.

Mr. *Dallas*.—Yes, my lord.

Mr. Justice *Le Blanc*.—Did not Stanbank, in his examination, say, that he understood some error was corrected, but did not know what error?

Mr. *Dallas*.—No; the examination did not go that length; we were not aware of the fact which he has stated in his affidavit.

Lord *Ellenborough*.—"I think he said it was for the purpose of making some correction. I do not know that he mentioned the part of the account he wished to correct, nor the reason why he wished to correct it. I did not give him the account back, because it was settled and signed by general De Lancey. I think I told him that if there were any corrections to make, he might give credit in a supplemental account. I do not remember his saying any thing about commission improperly charged."

The following affidavits were then read on behalf of the defendant:

The affidavit of *General De Lancey*, stating that, in the beginning of the year 1808, he had a conversation with Mr. John Stanbank, accountant to the barrack-office, upon the subject of the accounts of Alexander Davison with the barrack department, and of the commission which had been charged by said Alexander Davison on the articles furnished by him from his warehouse in Bedford-street, in the half-yearly accounts, from December, 1797 to June, 1802, and that he then inquired of said John Stanbank as to what had been done in relation to the said commission by the said Alexander Davison; and whether the said commission, which had been so charged by the said Alexander Davison upon the said articles so supplied from his warehouse on account of the barrack department, had been repaid or accounted for; and that the said John Stanbank then informed him, deponent, that such commission had been credited to the barrack-office by the said Alexander Davison.

In the KING'S BENCH,

THE KING  
against

ALEXANDER DAVISON, Esq.

*John Bowring*, of St. James's-square, in the county of Middlesex, maketh oath and saith, that he is book-keeper to the above-named defendant, and has been with him in that capacity since the month of January, one thousand seven hundred and ninety-five. And this deponent saith, that during the period in which the said Alexander Davison was employed by the barrack-office, he, the said Alexander Davison, was extensively engaged in business as an army clothier, that he also carried on business, and acted as a general merchant, and

at the same time had an extensive establishment as a prize agent, and was employed by the foreign department in executing several large orders for the court of Portugal, as also by the navy board, and had the clothing of the whole of the marines of Great Britain, and was also at the same time frequently employed by the transport board and treasury in many important transactions, requiring great exertion and dispatch, and many of them of a nature and description which occupied much of his time and attention. And this deponent farther saith, that in consequence thereof, he, the said Alexander Davison, was necessarily obliged to intrust the management of such of these concerns as were conducted in a regular course of business, and the keeping and making out the accounts relating thereto, and to his general concerns, to the care and superintendence of him, this deponent, and the other persons employed by the said Alexander Davison, and that the said Alexander Davison was not able to examine the same, or the particulars thereof, so minutely, or to give such personal attention thereto, as he probably would otherwise have done had he not been so extensively employed.

JOHN BOWRING.

Sworn at the Treasury chamber,  
the 6th day of February, 1809,  
before me, N. GROSE.

The affidavit of *Francis Earl of Moira*, stating, that in the year 1793 he was appointed to the command of a considerable army, then under orders for embarkation to the west of France. That the plan of this expedition being so suddenly adopted, that the greater part of the forces destined for it were troops already embarked for another service; no provision whatever had been made for the equipment of this corps, as an army for a campaign. And this deponent, on applying to the different offices, found that the necessary supplies could not be furnished from the then existing stores, while the deponent was told he must sail before the expiration of a week from the first announcement of his being to conduct this enterprise. This deponent, therefore, represented to the late Mr. Pitt the impossibility of putting those forces into condition for movements in the field without extraordinary exertions, and asked the consent of Mr. Pitt to his soliciting Alexander Davison, esq. to accept the office of commissary-general, and to undertake immediately the providing such stores as were requisite both for the British troops and for the French royalists expected to join the army. That he then was not intimate with defendant, who had no previous knowledge of this step of the deponent, but that he recommended the defendant solely from the character he bore for remarkable activity, attention, and punctuality, as well as from understanding that the defendant had already been conversant with the supply of troops, and had executed several important services for government much to their satisfaction. That he did, with the con-

exit of Mr. Pitt, so solicit the defendant, who, as the deponent verily believes, would not have accepted the situation had it not been pressed upon him as an exertion for the public service. That the said Alexander Davison attended the army in the capacity of commissary-general at Southampton and the Isle of Wight, for nearly two years, and that during that period this deponent had frequent opportunities of observing the conduct of the said Alexander Davison, in that capacity, which appeared to this deponent to be unremittingly zealous, diligent, and careful; and this deponent gave great credit to the defendant for the disinterestedness with which he forbore to claim certain emoluments that had been considered as attached to his situation. Of this the deponent recollects a particular instance, in the defendant's selling empty casks, which were then understood to be the acknowledged perquisites of the commissary-general, and crediting government with the produce to the amount (as well as this deponent can remember) of between six and seven hundred pounds. That during the time while the said Alexander Davison so attended the army at Southampton and the Isle of Wight, this deponent was several times applied to, on the part of government, to grant permission of absence for the said Alexander Davison to go to London for the purpose of providing arms and other supplies requiring much dispatch, and which services did not form any part of his duty as commissary-general, and the said Alexander Davison did, in consequence of his, this deponent's permission, leave the army several times in order to attend to those services. That one of those services was, the procuring of a large quantity of muskets for the royalists in France. That supply of arms, the deponent hath reason to believe (it having been so stated to him by persons then in office) could not be procured by the Ordnance, but the muskets were obtained by the said Alexander Davison upon his private credit as a merchant. That in the year 1806 the deponent applied to and solicited the said Alexander Davison to accept the office of treasurer of the Ordnance, which, at this deponent's earnest request, he was prevailed upon to do. That the duties of the said office required considerable time and attention, and that the emoluments thereof were not more than 600*l.* per annum, as deponent believes, and that the said Alexander Davison, in accepting such office, was under the necessity of relinquishing his half-pay as commissary-general, amounting to 547*l.* 10*s.* per annum, as this deponent was at the time informed and believes. That his reason for wishing the defendant to undertake that office was, on the one hand, the opinion he had formed of the defendant's integrity, exertion, and precision, during his former public transactions with the defendant; on the other, a determination to have a prodigious arrear of Ordnance accounts brought up, an undertaking hopeless, unless the deponent could rely on the zeal of the person employed.

That said arrear was nearly brought up in the year during which the defendant was in office, and the importance of the measure was displayed in a material effect to the advantage of the public, upon subsequent contracts, as reported to the deponent by the clerk of the Ordnance. That when he requested the defendant to undertake the situation of treasurer of the Ordnance, he explained to the said deponent the principle of the bill which he, this deponent, was about to bring into parliament for the regulation of that office, by the provisions of which the treasurer would be precluded from ever having a sixpence of the Ordnance money in his own possession, or of making any advantage whatsoever by it, or of gratifying partiality by giving priority of payment to any one of the holders of debentures; and this deponent told defendant it had been settled with the first lord of his majesty's treasury that the salary of treasurer of the Ordnance should be augmented to above double of the existing allowance, as a compensation for the estimation of other advantages; whereupon the said defendant did make it an absolute condition for his acceptance of the office, that there should not be, during his tenure of it, any addition to the salary, and defendant did, without any other emolument than the small balance between the old salary and his half-pay, discharge the duties of the office, as above stated, to the entire satisfaction of deponent, and to the benefit of the public. That in the above functions, as well as in any other situation where he has had occasion to inspect the conduct of the said defendant, he believes the said Alexander Davison to have acted with strict probity, and with extraordinary zeal for the public service.

The affidavit of John Earl of Chatham, stating that he has known Alexander Davison, of St. James's-square, in the county of Middlesex, esq., for upwards of twenty years past, and that he has had frequent occasions, during the course of the last war, of learning the zeal and activity with which he exerted himself in procuring supplies for the public service, much commended by those persons who had occasion to employ him occasionally in many important concerns, and which he, deponent, understood he had always executed very much to their satisfaction. That in 1804, he being then master-general of the Ordnance, when there was a great pressure for arms, he had occasion to see the said Alexander Davison in consequence of having understood that he had a certain quantity of arms and accoutrements by him, and that he also had made a contract for a farther supply; and upon the said deponent's expressing a wish that whatever arms or accoutrements were ready should be made over to the public; and moreover, that he would exert his utmost zeal and diligence to get the farther supply completed and transferred to the board of Ordnance; he, the said Alexander Davison, did most handsomely

accede to the same, and did actually obtain for the public service a considerable number of arms at a very reasonable price and with very great dispatch, he, the said Alexander Davison, refusing to take any reward or profit for those services, either in the nature of commission or otherwise.

The affidavit of *Sir Evan Nepean*, bart: stating that he has known and been acquainted with the defendant since the year 1782; the said defendant having in that year been introduced to this deponent by a letter from *sir Frederick Haldemand*, then governor of Canada, and by which deponent understood and believed that the conduct of the said Alexander Davison, during his residence in that colony, had been highly approved by the governor, and had rendered him, the said Alexander Davison, deserving the favour of government.—That during the time he, this deponent, held the office of under secretary of state, he frequently witnessed the exertions, activity, and zeal of the said defendant, on occasions where he was employed by government, and that those zealous exertions were more particularly apparent on a very important occasion which arose in February, 1793, when it was thought necessary that a body of troops should be conveyed to Holland. That, it appearing from the report made to the late Mr. Pitt, by the late *sir Henry Martin*, then comptroller of the navy, that transports could not be provided and be properly fitted for the conveyance of the said troops, with stores and other necessities so as to enable them to reach the place of their destination within the time wherein it was supposed their services would be required, and that in the event of so much time being suffered to elapse in providing shipping for the conveyance of the said troops and other necessities (which to the best of deponent's recollection amounted to some weeks), the public service might materially suffer, recourse was had to the said defendant, who undertook to perform such service, and notwithstanding all the difficulties he had to encounter, the whole was accomplished by him in less than five days, highly to the satisfaction of Mr. Pitt, and of the secretary of state, under whom deponent then acted, who considered the exertions of the said defendant on that occasion to be highly beneficial to the public service. That in all the proceedings of the said defendant in the exertion of the various services entrusted to him, there appeared to deponent a liberality in respect to emolument which deponent always considered as highly creditable to him.

*Mr. Attorney-General*.—There is an affidavit produced by the defendant, made by a clerk in the Ordnance-office, in which, as Mr. Deakry observes, there is a defect in the jurat. It is intended to show what would have been the amount of commissions upon the stands of arms which Mr. Davison supplied. The amount is about 800*l*. As that is mere matter of calculation the court will, perhaps, take no-

tice of the affidavit, notwithstanding the defect in the jurat.

The affidavit of *William Leake*, esq. of Sackville-street, stating that deponent did, sometime in, or about July, 1803, raise and embody a corps of volunteers, under the name of the loyal Britons, consisting of four companies of sixty men each, and which establishment was afterwards, by his majesty's permission, increased to six companies of sixty men each, of which the said defendant was appointed lieutenant colonel commandant. That the said defendant has, in forming and training such corps, expended a very considerable sum of money, amounting, as deponent has been informed and believes, to nearly 3,000*l*. That deponent was, shortly after said corps was raised and embodied, appointed major of said corps, in which situation he has had frequent opportunities of observing the conduct of said defendant, who, upon all occasions, has appeared to deponent to be and was, as deponent believes, actuated by the purest sentiments of loyalty and zeal for the public service.

*Mr. Dallas*.—My lord, it is now my duty to address the Court in mitigation, and in mitigation only. I am not now at liberty to make any observations of a tendency to impeach the verdict; and to the rule of the Court in this respect I shall endeavour strictly to conform.

The nature of the offence of which this unfortunate gentleman has been convicted, and the evidence adduced in support of the charge, have been fully and correctly detailed in the report which your lordship has read. From that evidence it appears, that the transactions; which have unfortunately led to this prosecution, originated in 1794, from an agreement entered into by Mr. Davison, in consequence of a proposal made to him by general De Lancey. The general has stated, that at the time of his proposal he had no personal knowledge of Mr. Davison; and that his only inducement to make application to the defendant arose from his being spoken of in terms of the highest commendation in the different public offices, where the duties attached to the general's situation required his presence.

My lords, with respect to the nature of this agreement as originally proposed by general De Lancey, and acceded to by Mr. Davison; there is not, nor has there ever been any controversy between the attorney-general and myself. I am sure the noble and learned lord will do me the justice to recollect, that at the trial I distinctly admitted that the nature of the agreement in its original state was such, that Mr. Davison was not entitled to derive any emolument beyond the stipulated commission, and that any emolument beyond that commission would have been fraudulently obtained. But your lordship will permit me to point out dates which, even upon the question of mitigation only, seem to me of very great importance.

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The agreement in question was entered into in the beginning of 1795; the earliest transaction which appears to be impeached by the evidence occurred in 1798. During a period of four years, then, in the course of which upwards of half a million of the public money passed through his hands, his execution of the trust committed to his charge was blameless and irreproachable. And, my lord, under what circumstances did he so conduct himself? During the whole of this time no public inquiry was in progress or in agitation; it was a season of profound security; it was a time, during which (if I may so express it) public suspicion was asleep. It was at that time just as much within his power, had he been fraudulently disposed to share with any person a clandestine participation of profits, to commit that which he is charged with committing, at a subsequent period. He had it in his power to deliver bills of parcels and receipts, without disclosing the fact of his being himself the seller, in order to entitle himself to the profit as an agent on commission. I am, therefore, entitled to say, not only that there was a blameless and irreproachable fulfilment of the agreement during the four years I have specified, but that it was praiseworthy and meritorious in the highest degree. We have it upon the evidence of general De Lancey—upon the testimony of Mr. Lodge—upon the proof furnished by every part of the case—that with respect to the quality of the articles—to the prices—to the punctuality of supply, and to all the collateral circumstances attendant on a faithful fulfilment of the agreement, Mr. Davison conducted himself with the strictest attention to the duties of his situation. And, my lords, upon an occasion of this kind, I hope the Court will not think I am attaching too much importance to this part of the case. That, which, under different circumstances—that, which, in a season of prosperity might be improper and disgusting, as a proud and presumptuous boast, may, under an unfortunate reverse of circumstances, be fairly submitted to the Court in extenuation of imputed guilt, when the question is as to the degree of punishment, and when the punishment ought to be apportioned, not after a *partial* view of separate and detached facts, but after a full consideration of all the circumstances of the case. I am sure I do no more than utter what is felt by every judge upon the Bench of England when I say, that in the administration of the most painful part of judicial duty, the administration of criminal justice; there is no person who does not feel gratified when circumstances can be brought forward to show some merit in a defendant, and when an abatement of individual suffering may be compatible with the demands of public justice.

My lords, I come now to a very important part of this case, and which has, unfortunately for this gentleman, terminated by bringing him into the situation in which he now stands—I mean the change introduced into the agree-

ment in the latter part of 1797 and the commencement of 1798. I will endeavour to state very shortly, from the report of the noble and learned lord, what were the circumstances which led to this unfortunate change. It appears from the testimony of general De Lancey that towards the conclusion of 1797 there was a considerable increase in the demand for barrack stores, and that, in consequence of such increase, a proposal was made to him by Mr. Davison, that the persons engaged in the execution of his army contracts should be employed in providing stores for the barrack department. General De Lancey has stated that, in consequence of this proposal, a change, or something like a change, took place in the agreement as originally framed in 1794—that change being, as the general has stated, of this nature; that before 1798 the defendant was acting strictly and singly in the capacity of an agent, and, therefore, bound (as I have distinctly admitted) to abstain from being, either openly or clandestinely, himself the seller; but that in 1798 general De Lancey, with a view to the advancement of the public service, acceded to the proposal of Mr. Davison, who from that year, under the employment of the general, was to supply stores belonging to himself.

Now, my lords, it certainly is not competent for me to contend, after the verdict pronounced by the jury, that Mr. Davison, in consequence of the change in the agreement, was at liberty to charge commission upon what he sold as upon what he bought; but I am sure the Court will forgive me, if, with a view to the nature and to the degree of the offence, I take the liberty of pointing out the peculiar circumstances in which he was placed by this alteration.

In the first place, it is perfectly clear from the evidence of general De Lancey, that the saving of the commission to the public was not the inducement to this agreement. Its object was, to increase the supplies in future, and to accelerate them in order to meet the demands of the public service. Nothing whatever was said as to the commission; and the general has expressly admitted that nothing was said as to any other alteration in the agreement: that continued the same in all other respects. My lords, I make the observation for this purpose, and for this purpose alone; that if, at the time when permission was given to Mr. Davison to sell his own stores upon the principle of benefit to the public, it had occurred to the honourable general to draw a line of distinction between those which he was to buy and those which he was to sell, and had he stated that commission was not to be charged upon the latter, most unquestionably, as that commission has been charged, there would be no possibility of resisting the conclusion that Mr. Davison is guilty of a gross and intentional fraud: but it is admitted that no explanation whatever took place upon the point. My lords, upon this part of the case, I am

sure I do not mean to offer any observation which may ultimately appear not to be well-founded. I distinctly admit that, generally speaking, an agent upon commission is not entitled to any other profit; and for the plainest of all reasons; because an agent who is employed to buy of others is not at liberty to sell what belongs to himself. If, therefore, he does sell without his employer's permission, the act is certainly a fraud in breach of his contract. But, my lords, that is the case of a mere agent; he certainly is not at liberty to sell. Now I am sure it is quite impossible for any one of your lordships to have attended to the report read by the noble and learned lord, and not to have observed that the situation in which this gentleman was placed by this change was perfectly anomalous, and different, in many important respects, from what it would have been had he been a seller only. As his lordship proceeded in the reading of the report I attended to the account given of this transaction by the general himself; he has stated that the only deviation from the original agreement was in the defendant's being allowed to sell. In addition to this the general states it was expected that Mr. Davison should be prepared beforehand; he adds that if things which he had prepared were never sold, they must remain on his hands; they were sent, at his risk, to various barracks, and if disapproved, he was bound to take them back to his own loss; and this, the honourable general states, he believes happened in many instances. In the common course of mercantile dealings this would not have been the case; all the seller's anxiety ceases when the goods are delivered at the warehouse. But Mr. Davison was responsible for those he sold as well as for those he bought, till they were delivered into the different stores: he was in the double capacity of seller and agent, and according to the words of the witness whose testimony has unfortunately proved fatal upon other parts of the case, I do not see how you can separate the two characters.

My lords, if this case had been submitted, without the vouchers, to the consideration of any professional gentleman, though he could not have gone the length of saying that Mr. Davison was entitled to as large a commission upon his sales as upon his purchases, yet I think he would have been of opinion, that this agreement, as an agreement, operated in restriction of his rights as seller. If he were responsible for any damage of the goods sold by him, which as mere seller he could not be, he would have been entitled, in my opinion, to a reasonable compensation. Upon that part of the case, however, it does appear, that under circumstances of extreme peculiarity this gentleman was induced, from the commencement of this agreement, to make the charge of commission, there never having occurred in the execution of the contract up to that time, any one circumstance of a fraudulent character.

My lords, I now proceed to a part of the

case of which, undoubtedly, I must speak with very considerable pain; i. e., the means which appear to have been employed for the purpose of receiving this commission. And, as I am not at liberty to make any observation tending to impeach the verdict, my remarks upon this part of the case must be extremely limited. At the trial I made all the observations, which then occurred to me, to satisfy the jury that the means employed were not fraudulently intended: unfortunately, I failed to convince them. I am sorry to say, I fear I made no impression upon your lordship's mind; and therefore, I have very little to address to the court upon that part of the case. In all questions involving the fact of intention, the guilt or innocence of a man can be known with certainty to the party himself only; earthly tribunals can draw conclusions from transactions only: and those tribunals must, for all the purposes of justice, give a denomination to those transactions. The jury having, upon a consideration of the case, found that a fraud was intended to be committed by Mr. Davison, I am, unhappily, precluded from making any observation that will tend to impeach their verdict. I shall, therefore, strictly conform to my pledge at the commencement of my observations, by doing nothing which has the slightest tendency to contravene the rule of Court. Your lordships will give me leave to add, that whatever affidavit the defendant could have made or might have been disposed to make, in as much as he could have made none which would not in substance have denied his guilt, he has, in conformity to the advice of his counsel, abstained from making any whatever; and, with respect to other parts of his conduct, he has thought it proper that they should be related to the Court on the testimony of other persons.

Not intending then, my lords, to examine whether the vouchers were delivered with a fraudulent intention, I will, with your lordship's permission, make one or two observations upon the nature of them. These vouchers appear to have been bills of parcels and receipts in the names of persons by whom the goods were not sold. Most undoubtedly, if Mr. Davison had not been at liberty to sell, and had delivered in such accounts, the case would have assumed a character very different from its present; for, with respect to these vouchers it cannot be contended on the part of the prosecution (I am sure it will not, for the permission to sell is fully proved by general de Lancey), that they were calculated to conceal from the knowledge of the barrack department the fact that Mr. Davison was actually selling to that board. It is not imputed to these vouchers that they state false quantities or false prices: all that is charged is, that—being at liberty to sell—having, in execution of the agreement, furnished articles of the best quality—having charged no more than he was entitled to receive—he put in these vouchers for the purpose of obtaining that commission from general

De Lancey which would have been withheld had the general known that Mr. Davison was himself the seller. The criminality of these vouchers, therefore, is reduced to the single point, that they are intended to obtain commission on articles, on which, from the testimony of the general, if the name of Mr. Davison had appeared instead of the name of one of his clerks, the commission would not have been granted.

My lords, I may deceive myself, but I hope I do not. If we consider that this commission was charged, under circumstances of such extreme peculiarity, by a person placed in a situation in which he was vested with a double character—the one not capable of being separated from the other—in which he was at once (on the testimony of general De Lancey), the agent and the seller—and in which his duty as *agent* under the agreement operated in restriction of his rights as *seller*, and imposed upon him duties to which as a mere seller he was not subject—if, I say, all these considerations are attended to, it will, I think, be evident, that a case of so much peculiarity is extremely different from most of those cases of fraud, which have heretofore been brought before the Court.

I will not go into a detail of particular cases. It is unnecessary, and would be painful to my own feelings, to bring before the public the names of those who by their sufferings have expiated their guilt. I will, therefore, merely say, in general, that many of those cases were of that description of pure, unmixed fraud, about the original formation and concoction of which it was impossible to entertain a doubt, even for a moment. When it has appeared that false quantities were charged—when it has appeared that parties charged more than they paid—when it has appeared that they charged for what they did not pay—no man living could say that there was not clearly a fraudulent intention in the mind of the person making such a charge. But such is not a description of the present case. General De Lancey states, that Mr. Davison might have drawn up a case for commission which he would have referred to the opinion of his superior; and though he has given evidence fatal to this unfortunate gentleman on the pressing part of the charge, the general has added, that he would employ him again were he again to hold his former situation, because he had seen much of his conduct during the long period of ten years in which Mr. Davison distributed one million of the public money; and in consequence of such conduct he had confidence in his fidelity. I own this case does appear to me, for the reasons I have given, to be one that essentially differs from cases of the description to which I have alluded.

I am confident I do the Court no more than justice, in saying, that they are anxiously desirous to see whether there are circumstances which can entitle this unfortunate gentleman to a lenient consideration of his conduct, and I own it appears to me, that the

case which bears the greatest resemblance to this, is one which was tried some years ago before the late lord Kenyon. I will not mention the party's name. The trial took place in 1794. It was the case of a gentleman who was naval storekeeper in the island of Antigua.\* The information exhibited against him seems to be the one from which the present was transcribed. It imputed to him that he was in an employment of great public trust and confidence; that being in that employment, and bound to render faithful accounts, he had produced false and fraudulent vouchers with intent to cheat and defraud the king. But there were circumstances of peculiarity in that case as in this. It appeared that upon the whole, there had been a highly beneficial execution of the contract, it appeared that there might be, in the mind of the gentleman then charged, some misconception of the subject, and therefore though the jury, under the direction of the noble and learned lord, did actually find him guilty of having obtained, by the production of fraudulent vouchers, that to which he was not entitled, yet under the peculiar circumstances of the case (the Court seeing much merit in the gentleman), the solicitor-general consented to receive back the sum, of which the gentleman was found to have defrauded the public, the sum of 1,000*l.*, and the judgment of the Court was, that, having been imprisoned for five months, he should be imprisoned for seven months more. I am sure the Court will not misconceive the design of my making this statement: far be it from me to suggest to the Court the rule they should pursue: all I mean to suggest is (what will obtain the concurrence of every learned judge upon the bench) that where there are favourable circumstances in the case, the Court will grant the defendant the benefit of those circumstances. And here, my lords, I must suggest that, in the case I have referred to, there appears not to have been any discontinuance of the practice till the moment of detection, nor any endeavour to return to the public the money which had been improperly procured.

My lords, there is one other circumstance, and one only, upon which it will be necessary for me to observe. It has been supposed that this money was intended to be fraudulently acquired, and, that having been so acquired, it was intended to be fraudulently retained; and that, with a view to the concealment of this money's having been obtained, the defendant in his examination before the commissioners, stated, that no commission had been charged upon some articles supplied from his own stores. Without meaning to dwell upon the literal truth of this answer (for certainly upon articles supplied from 1804 to 1806 no commission was charged) the material consideration will be, whether this gentleman had not reason to suppose that this sum had been received by the public, that it had been stated in

\* R. v. Munton. 1 Esp. N. P. C. 60.

the different accounts, and would not fall upon the public by way of charge.

My lords, it was undoubtedly with extreme pain, that I heard it was to be doubted, whether Mr. Davison ever intended to return the sum which he had received upon the ground of commission. My lords, I own I have very much deceived myself, unless under the circumstances of this case, it can be made perfectly evident that it was the intention of Mr. Davison, long before any discovery of its having been received, to return the commission, which Bowring states he, as well as Mr. Davison, supposed he might have been originally entitled to, but which, upon the doubt suggested by Bowring, it does appear that steps were taken to return in 1804.

My lords, permit me to examine this (for it is an important part of the case) first upon the ground of probability, next upon the admitted facts of the case, and lastly upon that evidence, which may be the subject of controversy on the part of the law officers of the Crown. My lords, one fact, independent of all evidence, is perfectly clear; from the year 1802 to 1804, when the transactions closed, there was a discontinuance of the practice; there was an abandonment of the charge of commission. That abandonment occurred in 1802, and subsequently to that year there was no recurrence to the practice.

My lords, I own it does appear to be not only an observation in favour of the defendant, but one which we are entitled to make by all the rules of fair and strict reasoning, that, when you find a person abandoning a charge for the future, you have every reason to suppose that he would not be extremely tenacious of retaining the profits already obtained. This, I think will appear the more probable, if we turn from the act to the motive. In 1802 Mr. Davison ceased to charge commission. Now this must have proceeded from one of two causes; from innocence and honesty of intention, or from dread of discovery. If it proceeded from honesty of intention, what reason is there to suppose that he intended to retain this money, when at the same time he gave up a much larger sum, which, had the practice been continued, he would have received? The same honesty which led him to discontinue the practice would also lead him to return to the public the sum received by him. If dread of discovery is to be considered as Mr. Davison's motive, that dread had by no means ceased; there was a greater probability of persons in public situations becoming the object of public enquiry. The fact, therefore, not being disputed that there was a discontinuance for two years before these transactions closed, I do contend that, whether the discontinuance originated in the one cause or the other, there is no reason to doubt but that this gentleman did intend to return what he had obtained.

But, my lords, how does it stand upon the evidence? And here I shall put aside for a moment the evidence of Bowring, and examine

the case as it stands upon the evidence of Mr. Stanbank only. Mr. Stanbank admitted that, in 1802, an application was made to him to return the former accounts. Now, connecting these two facts, the relinquishing the charge in 1802, and the application at the same moment for past accounts, can any man doubt that the application for the past accounts was for the purpose of enabling Mr. Davison to return that commission to the public which was not intended to be made matter of charge in future. But though it is perfectly true, as Mr. Stanbank stated in his original examination (and at present I refer to that alone), that the distinct purpose was not explained to him at the time, yet he was told that it was for the purpose of making some alterations in the accounts. If these alterations had been made, it must have appeared what they were. And taking these two circumstances together (Bowring having stated that alterations were intended to be made on the face of the accounts), I can most positively declare that my mind can come to no other conclusion than that the alterations were to be made for the purpose of giving credit to the public for what had been improperly received in the first instance. If these accounts had been returned by Mr. Stanbank, the commission would have been repaid to the public: but Mr. Stanbank adds (what is most important), that he could not give back the accounts as they had been settled. Of this settlement Bowring had no knowledge. He was, however, told by Mr. Stanbank that a supplemental account might be delivered. Now, my lords, it is not enough to say, that, in the supplemental account, other sums were afterwards credited to the public; for it was not necessary to get back past accounts to credit those sums. Upon this view of the case, therefore, it does appear to me that, when application was made for these accounts, there was an intention to repay to the public the sum of money which had been obtained, but with respect to which a doubt was suggested to Mr. Davison. Immediately after this suggestion Mr. Davison discontinued the practice.

My lords in addition to what I have stated, we must recollect that the evidence of Mr. Stanbank upon the trial, went merely to the original conversation. He was not asked—

Mr. Justice *Le Blanc*.—Did you refer to any subsequent account in which it was deducted?

Mr. Dallas.—No, my lord: there was no supplemental account taking notice of it. Mr. Stanbank was examined at the time as to the conversation between him and Bowring, and he spoke loosely as to the particulars of that conversation. But being examined afterwards, as to a subsequent conversation with Mr. Davison himself, he states in his affidavit that, about the end of 1803, or beginning of 1804, Mr. Davison told him that this sum was intended to be given back to the public.

My lords, under these circumstances, it



does appear to me, with profound submission to the court, that it would be a hard conclusion to draw, and really not warranted by the facts of the case, that Mr. Davison intended to retain this sum for his own benefit: undoubtedly he intended to return it. And though the accounts had been made up with great diligence, yet Bowring stated a variety of public concerns of the most extensive nature, in which Mr. Davison was employed at the time, and added, that the omission to introduce this charge into the supplemental account rested with himself. But really when your lordships find, that in 1804, and 1806, this unfortunate gentleman was giving up a commission, to which he was entitled, to a greater amount than the sum in question, to the amount of 2,000*l.*; is it to be supposed that he would cling to the sum of 1,300*l.* after having applied for the accounts to correct them; after Mr. Stanbank's having become acquainted with the circumstance; after the conversation with Mr. Stanbank, in which he stated that he was debtor to the public in that sum of money, can it be fairly supposed that this gentleman meant to retain this sum?—My lords, it does appear to me that, under these circumstances, there is ground for imputing great negligence and inaccuracy to the manner in which the business has been conducted. The facts to explain that part of the case are before the court, and I will say no more upon it, but that I shall be extremely disappointed if your lordships can suppose that Mr. Davison meant to retain this money, and defraud the public.

My lords, I know not that there are any other circumstances of the case upon which, as belonging strictly to the case itself, it is necessary for me to observe. Your lordships will, however, permit me to draw your attention to a great deal of testimony given at the trial, and to which much has been added by the affidavits produced to day. And though courts of justice are not in the habit of giving much weight to mere evidence of character; yet that must depend upon the circumstances of the case.—I know that such kind of evidence is often made use of for improper purposes; that it is sometimes made use of to set the feelings of the jury in opposition to their duty. But, when character comes before the court, from such sources as leave no doubt, that that which is honourably given, has been honourably acquired, such evidence the court will not take to be light or immaterial; for that would be to destroy the gradations of guilt; it would destroy the distinctions between crimes of different degree, and put the best and the worst man in the same situation.—I will not attempt to go through the different affidavits; the earliest is the affidavit of Mr. Hunter. I do not know whether that gentleman, now enjoying the fruits of his industry, at the close of a long life, is as well known to your lordship as he was to your lordship's predecessor. I understand he has been in the habit of serving on

special juries. He appears to have lent assistance to this unfortunate gentleman at his outset in life: he has watched him for forty years, the longest part of the life of man, and speaks of him with the greatest interest.—We find him, afterwards, in the most important scenes of public service, conducting himself with the approbation of men of the highest names. We find him employed in the most extensive branches of public service, and uniformly conducting himself with diligence, integrity and honour. But the affidavits do not stop here; for there is a circumstance connected with them highly deserving the consideration of the court. It appears, upon the affidavit of lord Moira, that in the year 1793, no less a sum than 750*l.* which this gentleman might have retained, he resigned to the public. In 1804, (after the transaction now the subject before the court) he gave up 850*l.* to which he was entitled on account of arms mentioned by lord Chatham. He gave up to the public, in the shape of half pay, which he resigned on taking his situation under the board of Ordnance, at a salary of 50*l.* only, as much as, with the other sums would amount to an actual sacrifice on the part of this gentleman of 2,950*l.*—If in addition to all this, we recollect that these different articles of supply, though sold by himself, were sold two and a half per cent, under the market price, that would amount to 1500*l.*, making altogether the sum of 4400*l.* If to this is added the expense to which this gentleman has been put, for the loyal purpose of raising a corps, an expense amounting to 3000*l.*—that would amount to a sum between seven and eight thousand pounds, there being taken into the calculation what he might have received, but resigned to the public.

My lords, it is painful to me to go through this detail; but such are the changes in life, that the prosperous man may have to beg, where he has bestowed; and I trust the generosity and liberality of the defendant, in his happier days, will not be overlooked in the season of depression and distress.

There are a few other circumstances to which I shall shortly call your lordship's attention.—I say not much upon what this gentleman has already suffered; nor shall I dwell much upon circumstances of a domestic nature.—I know perfectly well (such is the unalterable construction of things) that the innocent must be involved in the sufferings of the guilty. But, if the innocent must be so involved, it is at least a lenient and an assuaging principle on which a court of justice will be always ready to act, that if there be merit which can not be permitted to operate in favour of the guilty, it may be applied to diminish the sufferings of the innocent. This consideration emboldens me to speak of the domestic circumstances of this unfortunate gentleman. He has two sons both employed in an honourable career in the service of their country; one in the army, the other in the militia; and I will venture to say, both honourably distinguished. If there be

any merit in the conduct of this gentleman in the sacrifice I have mentioned, let that meritorious conduct be beneficial to his sons, even if it must not operate in his own favour. I grant that we must allow money to have been obtained by improper means; but your lordships will recollect, that there is nothing to impeach the honourable execution of the contract for four years. Your lordships will not forget, that in no instance, except in the charge of commission, has any fraud been imputed to him. Your lordships will recollect, even if you are not disposed to give him credit for an intention to return this money, that there had been an abandonment of the practice long before the discovery took place. Your lordships will also recollect that, in the execution of this contract in every other respect, it was faithfully, honourably and diligently fulfilled, and, above all, that when he was charging this commission to the public, he charged three per cent under the market price, for the different articles furnished by him; thus giving from his profits as a merchant more than he received by way of commission; and therefore doing no injury eventually to the public.

My lords, I will take up no more of your lordships' time: I have endeavoured to abstain from making any observations which may give offence to the court. If I have trespassed too long, it has been inadvertently; and your lordships will not, I am sure, visit it upon the defendant. I sit down feeling perfectly confident that the court will administer justice with mercy. I mean not mercy without justice; but that the court will pronounce a moderate punishment, upon a consideration of all the circumstances of the case.

*Mr. Attorney General.*—My lords, I can feel no pleasure in endeavouring to lessen the effect of the eloquent and judicious address which my learned friend has just closed. Nor would I endeavour to do so, if I thought that the justice of the case did not require that the facts proved against the defendant should be placed in something of a different point of view from that presented by my learned friend; and that results more just than those stated by my learned friend should be pointed out to your lordships.—Indeed, my lords, though my learned friend in terms disavowed all intention of impugning the verdict in this case, yet if your lordships were to admit the correctness of his reasoning upon this subject, you could hardly say that the verdict was right.—I feel it a part of my duty, to vindicate the justice of that verdict.—I feel it my duty to state shortly, but plainly, what the facts of the case are—what the guilt is, which is imputed to the defendant, how dangerous to the public is the commission of his offence, and what serious consequences it may have occasioned, though they are incapable of being absolutely and precisely proved.

My lords, it has been stated to your lord-

ships as matter of mitigation, that the defendant has been distinguished by many acts of liberality and beneficence. I wish him to have the full benefit of that part of his conduct, as far as he is legally entitled to it in his present situation. But if I rightly conceive the intended effect of these topics, it is, to raise in the public at large, a general good opinion of him, which may operate in his favour, through the evidence of those who stated, at the trial, that they believed him to be a man of good character incapable of committing a fraud. That benefit, as far as he was entitled to it, he had; and I am sure it is in the recollection of your lordship, and of my learned friend himself, that in my address to the jury I gave the defendant full credit for that testimony. I told the jury that it was testimony which deserved their most serious consideration; but only in this mode of application to the case before them: that if they thought the fact of his guilt might be fairly doubted, the character, which the defendant had obtained by his conduct in the former part of his life, ought to weigh in his favour, and that they ought not to come to a conclusion of his guilt upon doubtful evidence against the testimony of such a character; but that if the facts of the case were clearly proved, and stood contradicted, character, under such circumstances, should have no weight upon their minds. That was the way in which I put the case to the jury, and in so putting it, I think I gave the defendant all the benefit to which he can be legally entitled from his former conduct.—The question for the jury was, whether he had committed the offence imputed to him by the information: the question before your lordships is, the quality of that offence, disconnected from all other acts of guilt, and what degree of punishment is due to his offence.

Your lordships will permit me to state shortly what the charge against the defendant is. He was employed to supply his majesty's barracks with stores of a certain description. It was thought that the public would be best served, if one person were employed to look out in the market for whatever was wanted, to apply his skill, his diligence, his integrity as a guard against any fraud, on the part of those who might be employed by him, to furnish the requisite supplies—to see that supplies were provided at the lowest price, and of the best quality. And as this would require much of diligence, of skill, and of integrity, it was fit that an ample reward should be secured to the person undertaking the office. The reward proposed by the defendant was two and a half per cent upon all supplies, and to this proposal general De Lancey assented.

My lords, some merit has been claimed for the defendant because, in the year 1798 when there was a press in the market, he supplied those stores which could not be easily procured from other quarters.—That stands upon no testimony, but his own declaration. If your lordships will refer to general De Lancey's

examination, you will find that I asked pointedly whether he ever heard, at the time when a greater than the usual quantity was wanted, from any man, but the defendant himself, that there was any difficulty in procuring stores in the market—whether he ever had the curiosity to look at the names of those who furnished the stores in order that inquiry might be made of them, whether they were not able to furnish the quantities wanted—and it appeared that no such inquiry was made, nor any information received of there being any difficulty in procuring them, except the declaration of the defendant himself. It is very true, that general De Lancey said that, to which my learned friend draws my attention, “I had been informed by Mr. Davison, but I had made other inquiries.” But the result of those inquiries is no where stated: no person is stated of whom he had made inquiries, and if he had made any inquiries upon that subject, they must have been studiously directed to a channel from which they could obtain no intelligence. That I say, because there was an obvious course of inquiry, which any man desirous of information would have taken. He had all the quarterly returns; he had in these returns the names of all the tradesmen who had furnished the former supplies. The question was, whether the ordinary state of the market would furnish additional supplies? The only persons, therefore, from whom he could obtain any satisfactory information, were those from whom the former supplies had been derived; but of them he makes no inquiry; and in contradiction of that declaration of Mr. Davison, I remember that in the course of the evidence, it appeared that there was one part of the supply which came from the defendant, and which Mr. Darby, who had formerly supplied that and other articles, thought himself ill-used in not being called upon to furnish.

This being the state of the case, Mr. Davison in 1798 acted as a merchant by supplying the barrack-master with those articles, at the very time that he was under a contract with government, and receiving from them, under that contract, a remuneration for checking the supplies of others. How does he conduct himself? He knows perfectly well that for supplies furnished by himself he has no colour for charging commission. That was meant as a remuneration for his skill, diligence, and integrity, which were to be employed to prevent the supply of improper articles, or the charging of too high a price, by others. How then is he to secure this commission and avoid detection? Why, by suppressing his own name, and by raising the belief, in those whose duty it was to check his bills, that those supplies came not from himself, but from others. Was he aware that he ought not to charge this commission? It is proved that he was; he has furnished evidence to your lordships that he was most clearly aware of it.

That part of the evidence requires, perhaps,

a little explanation. Half-yearly returns were made by Lodge, the packer, of what was sent by Mr. Davison to him; and half-yearly returns were made by Mr. Davison to the barrack-master of what he charged the barrack-office with. As between Mr. Davison and Mr. Lodge the goods coming from Mr. Davison were charged under the name of Mungo Shedden, who was his foreman, and who, as it appears in evidence, was known to conduct the business in Bedford-street. With Mr. Lodge, therefore, Mr. Davison made it no secret that he supplied those articles himself. I should likewise state to your lordships that Mr. Lodge's returns, were made out from the accounts sent in by Mr. Davison himself. Why did they not go in under the same name to the barrack-office? Because the accounts were to be checked in the barrack-office: because there it was to be ascertained what Mr. Davison was to receive in money. Mr. Lodge's account had nothing to do with the prices, but with the quantities only. When the accounts, on which Mr. Davison's claim to remuneration in money was to be ascertained, went in, he thinks it necessary to suppress the name of Shedden, and inserts sometimes the name of Watson, and sometimes that of Allen, under-clerks in his own office, whose names were unknown. These clerks he represents to be merchants who had rendered to him those goods, which he was supposed to have purchased from them on the part of government.

Now, if your lordships look to the contrivance here employed, it will be evident that it could have proceeded only from a mind conscious of its guilt. He knew that his commission was due only on purchases made from others; he knew that those purchases were not made from others—he furnishes evidence of his having that knowledge by the manner in which he acts with Lodge, who has nothing to do with the prices. But when he comes to render this account to the Barrack-office, he suppresses the name of his own foreman and manager, and introduces the names of other persons to raise a belief in their minds that these persons were real sellers of goods to him on behalf of government.

Can it be doubted that a person thus conducting himself, had a consciousness that he was committing a guilty act? Here is an accumulation of guilt. There is a particularity in every part of these transactions which fixes them beyond all human doubt.—He was not only to render those invoices, but, by the regulations of the office, he could not be allowed his commission unless he likewise rendered a receipt signed by the merchant for the price which he was to have paid to that merchant. Then he goes through the farce and mockery of getting receipts from Allen, sometimes in the name of Watson, and sometimes on his own account, as if those goods had been furnished by them, and they had actually received from him: the prices of goods sold.—Now, could a

man travel through every stage which led to the completion of this fraud, hesitating at each act he committed in his progress, without being conscious that he was committing a guilty act! And if he possessed such a mind as my learned friend has ascribed to his client, could he have done this without some remorse arising in that mind?

Then it has been said, that though this commission was charged, Mr. Davison always intended to return it to the public. That Mr. Davison at one time intended to return this commission to the public—that he would have given double, treble, nay, ten times the amount of the commission to have returned it to the public, and to have obliterated every memory of the transaction, I have not the least doubt. But, throughout the whole of this case, I cannot find any evidence from which the slightest presumption can be raised, that Mr. Davison ever had an intention of returning this money to the public, without having at the same time a suspicion that the fraud committed by him might be detected. The desire of returning it, I am sorry to say, appears to have been created only by apprehension of discovery. That he would have been glad to do it, I verily believe, and I believe that he has many many times weighed in his own mind, before the thing was publicly known, the policy of returning the commission against the chance of the transaction always remaining concealed. If he had been sure of the discovery of the transaction, I believe that he would have returned the commission at an earlier time, and I believe that he was prevented from returning it, by a hope that what he knew to exist would never be discovered, as he was convinced that the return of the commission would lead to his immediate detection.

My lords, I mean not to make any uncharitable observations against Mr. Davison, nor to press hard upon a man who has certainly been degraded by the discovery. With my learned friend I feel for those who must share in his calamity. But I should not be doing my duty to the public, if observations, which I think are not supported by facts, were left by me without pointing out to your lordships where their support fails. On the contrary, I was surprised at my learned friend's venturing on such observations, after I had mentioned the many opportunities which the defendant had had of returning this commission, if so inclined.

The first opportunity mentioned by me was on the 17th December, 1806, when he was examined before the commissioners of military inquiry, when he swore that he had furnished some goods himself, but had charged no commission upon them. Now, your lordships see that the examination took place at a time subsequent to that at which he had ceased to charge commission, and, ceasing to charge commission, rendered goods in his own name. It is impossible that that examination should not have brought to his mind that he had sent in goods in the names of others from his own

warehouse, and had charged commission upon them, and if he had intended, upon any principle of honesty, to have returned it, then it is impossible that he should not have avowed the fact and declared that intention.—I cannot ascribe his conduct to any thing but what I have just stated to your lordships; that he would have been glad to have returned the commission if he had been sure that he could no longer conceal the transaction.

Your lordships will find that he had another opportunity on the 15th of May, 1806; and this brings me to some observations upon what my learned friend has said as to Mr. Stanbank's account. In May, 1806, Mr. Davison sent in a supplemental account; in that account he charges himself with about 15,000*l*. I do not mean that that 15,000*l*. constituted the charges which he had fraudulently made before; the fact is not so: but he gives credit for 15,000*l*. Having an opportunity of giving credit for this commission, if such were ever his intention, he neglects to do it. But, it is said, he applied to Mr. Stanbank, a little before this, for the purpose of getting back the accounts, in order that he might erase this charge of commission, and was then informed by that gentleman that he could not have the account returned, but that he might send in a supplemental account. Now your lordships will mark that. If this statement is true, he must have had the subject fully on his mind. Mr. Stanbank, in his examination, says, that he has no recollection of any mention of the return of the commission. There were other causes which made Mr. Davison desirous of getting back this account in order to correct it.

Not being able to procure a return of it, he renders a supplemental account, and in that account he gives no credit to government for what it is now stated to your lordships, he always intended to give credit. Add to this, that Mr. Bowring, his clerk, endeavoured to give a colour to this transaction of the same nature with that given by my learned friend to-day. But Bowring's account is not supported by facts; for, according to Mr. Stanbank's examination, that which Bowring would have added, namely, that he called for this account to erase the charge of commission, never was communicated.

But, my lords, what is that to the two opportunities he had of correcting this account, if such had been his intention. When he was examined in 1805—when he swore that he had furnished goods of his own, but that on them he had charged no commission—it is impossible that the contrary should not have been strongly impressed upon his mind. It is impossible that if he had intended to return it, he should not have done it then, for that fact could not be absent from his mind when he rendered the supplemental account.

Your lordships will find that, at a subsequent period, he wrote a letter to the commissioners, upon being called on to furnish a cash account to elucidate some of his charges. In

this letter he refused to render such cash account; and assigned as a reason that his accounts had been examined and settled and the balance paid.

Now, after these three obvious opportunities of correcting an improper charge, which he is stated to have made; namely, his examination before the commissioners, his rendering a supplemental account, and his being called upon for a cash account, when he hinted not at any error of this kind, how can it be gravely stated to-day that he did intend to return this commission. I think it is impossible for your lordships to be persuaded to entertain any doubt upon this subject.

It has been said, my lords, that the defendant, from 1794 to 1798, performed his duty in execution of his contract without complaint. My lords, he did so. But it does not follow that because he executed the duty of his office without complaint, there was no cause for complaint; and I shall have occasion to observe to your lordships, how likely it is that in the execution of that part of his duty which was performed between 1794 and 1798, the public suffered by the manner in which he then executed that duty. In 1798 he knew, that to assume the character of a seller would be advantageous to him; he knew at what price he had suffered other sellers to furnish stores; and he knew that his own stores would be furnished at these prices.

My learned friend has stated to your lordships that the vouchers which were rendered were not calculated to conceal from those who knew they were rendered, that Mr. Davison did actually supply some stores himself. My lords, whether they were calculated to produce that effect I know not; but they were directly pointed to the production of an effect which it was material for Mr. Davison to produce, namely, that these specific stores did not come from his warehouse, but from the stores of others, of whom he was supposed to have purchased them, and to whom he was supposed to have paid the sums of money mentioned in the receipts. Your lordships are told that there is a wide distinction between this case and the case of a man whose fraud consists in stating false quantities or false qualities in his vouchers. My lords, I cannot perceive the distinction; for whether he gains two and a half per cent by pretending that more goods have been furnished than were actually supplied, or whether he gains that two and a half per cent by pretending that he has performed a service which he has neglected, it appears to me that no real distinction can be made between the two cases.

My learned friend stated the case of some person tried in 1794, and who was convicted of a fraud of the same nature with the present; exhibiting false vouchers. But, he told your lordships, there was this material distinction; that there the fraud was not discontinued up to the time of the information; whereas here Mr. Davison having been in an error, corrected

himself, rendered his accounts in a different form and discontinued the charge of commission. My lords, if at the time of his discontinuing the charge of commission, he had stated, "I have been supplying the barrack-office under a contract by which I was generally entitled to commission, but a mistake has crept in, and here are goods which appear to have gone from my office: upon them also a commission is charged; but I have come, immediately after discovering it, to return the money, and I caution you against allowing the same money again:"—this would have been fair and honourable, and not the slightest imputation could have been passed upon Mr. Davison.—But is that the case? Here are false vouchers to support the charge of commission, and when the practice is discontinued there is no avowal of the impropriety.

Some merit is claimed for Mr. Davison, because he did not continue the practice, which it is said, was discontinued in 1802, long before the appointment of the commissioners of military inquiry who afterwards inspected his accounts. That is very true; but at the same time another inquiry was going on, which might well alarm those who were engaged in such practices; and I am by no means surprised, although the act for establishing that commission had not passed, that so early as 1802, Mr. Davison did think that he should best consult his own interest by discontinuing such a practice.

Such then, my lords, are the topics of mitigation which are applied to the particular circumstances of this case, and addressed by my learned friend to your lordships. I have stated, as shortly as possible, the nature of the charge against Mr. Davison. I think I have shown to your lordships, that the evidence not only irresistibly establishes the guilt imputed to him, but also negatives the idea entertained by my learned friend, that Mr. Davison intended to return this commission to the public as soon as he discovered the impropriety of the charge. My lords, it was not a conviction following the fact, but a knowledge which accompanied the fact.

Your lordships will now permit me to point out to you what consequences a fraud of this kind, committed in such a way, is likely to produce to the public. The expenditure under Mr. Davison's control amounted to not less, I think, than 1,300,000*l*. Upon this expenditure Mr. Davison was entitled to a commission of two and a half per cent, as a compensation for his labour in watching the conduct of others. He has received this commission, to a certain extent, on goods furnished by himself, and therefore that check which he was paid to interpose could not be employed. But do your lordships think that the mischief ends there? Do not your lordships see that the moment he becomes, or conceives the idea of becoming a seller himself, there is an end to all check upon other sellers? The whole business becomes a mockery; for as soon as he, who is paid by the

public for seeing that others do not render their goods at too high a price, intends to become a seller himself, he knows that he can not sell his own goods at a higher price than he permits them to sell theirs. He knows that his profits depend upon the price which he permits others to put upon theirs; and, therefore, the whole of that check which was intended to be purchased of him, at the price of two and a half per cent, is destroyed. I do not say that I can show to your lordships that this effect was produced. I know very well that when merchants are permitted in the market to charge a certain price upon their commodities, and that price is allowed, that price becomes the market price by that permission. I cannot, therefore, show your lordships that I could have got these commodities from other merchants at a lower price. But I put it to your lordships good sense and reasoning powers whether, when a man who has contracted with government for a reward of two and a half per cent to detect the frauds of others, and to see that their goods are furnished at a fair price, that man does not betray his duty by becoming a seller of goods at a profit far beyond the two and a half per cent. whether he does not palsy his efforts! whether he does not take from government all confidence in the check for which they have paid, and whether it is to be presumed that that check was applied for the purpose to which the defendant was paid for applying it.

If this be so, the trifling sum of 1,800*l.* received by him as commission is nothing in the scale. I do not know whether your lordships will concur with me in the observation, that when a man has received two and a half per cent from government for affording them a check on the frauds of others, and has so conducted himself as to show most clearly that neither government nor the public would have any confidence in the application of that check in the manner intended, justice requires that no part of the commission should be retained by that man. And if your lordships will look at the amount of the commission received by the defendant under the contract, after a deduction of the articles on which he charged no commission, and which were avowedly furnished by himself, you will find that his commission does not amount to less than 30,000*l.*; very little less, at least, if at all.

I know very well, my lords, that I am not now before your lordships to take an account between the defendant and the public, as to what the public have lost by his misconduct. I am not applying to your lordships for a civil remedy on the behalf of the public. It is not for me to suggest to your lordships the degree of punishment fit for a person convicted of a crime of which Mr. Davison has been found guilty. But I may without disrespect to the Court, suggest that one of the modes of punishment in your lordships hands is fine, and I confess, with deference to the Court, it does appear to me that this is a case in which above all others (always submitting to the superior

judgment of the Court) whatever else be done, the Court will probably in its wisdom say, that that mode of punishment is not to be lost sight of. If the public have had no check through the means of Mr. Davison, justice requires that the whole of the remuneration which has been made to him as the price of such check should be returned. Civil justice between the parties requires it; and even if should turn out that to a certain extent, upon certain parts of the transaction, they have received benefit, I think that criminal justice will not be too rigorously exacted by your lordships requiring from Mr. Davison a full return of what he has received from the contract in the execution of which he has thus conducted himself. Your lordships will pardon me for suggesting these observations; the case really presses them upon my mind: and I think it would be a very useful lesson to other contractors, not that they should be punished in this court for error or mistake, but that, if they are found acting fraudulently towards the public in the execution of any part of their contracts, they will be suffered to retain no part of the sum which is paid to them by the public as a price for their labour: that that mode of punishment will be inflicted upon them for their fraud, which will leave them in possession of no profit through the means of that contract in the execution of which they had conducted themselves dishonestly.

My lords, it would neither be necessary nor becoming in me to point out to your lordships the other modes of punishment which have suggested themselves to my mind. I feel that it would be improper to urge any thing further as to the mode to be pursued by your lordships in awarding punishment. I have thought it my duty to say what I have upon one mode of punishment. It appeared to me, that under the particular circumstances of this case, there was such a connexion between that punishment and the offence committed, that I could not help suggesting it. I am satisfied your lordships sentence will be such as to meet the wishes of every just man, that so much punishment will be inflicted upon the defendant as will satisfy the call of justice; and no more than will be found perfectly consistent with every principle of mercy.

Mr. Garrow.—My lords, this case has occupied so much of the time of the Court, that in the present pressure of business, I am sure I shall be excused if I do not trouble your lordships at all.

Lord Ellenborough.—Let the defendant be committed to the custody of the marshal, and brought up to receive the judgment of the Court on Friday next.

*Court of King's Bench, 9th February, 49 Geo. 3.*  
A. D. 1809.

Lord Ellenborough.—Mr. Attorney-General, business presses so much upon the Court, that

it will be hardly possible for us to give judgment in the course of the present term, in the case of the King against Davison.—This will be attended with no particular inconvenience to the defendant, because the imprisonment between the present and the next term will form but a portion, a small portion, of that particular species of punishment which the Court will certainly feel it to be their duty to inflict upon him.—In the course of your address to the Court, you mentioned something as to the amount of the commission received by the defendant. Is that amount likely to be ascertained and adjusted, so that the Court might advert to it for the purpose of making it an ingredient of the sentence?

*Mr. Attorney General.*—My lord I have no scruple to say—

*Lord Ellenborough.*—We do not call upon you for any thing which should at all pledge you.

*Mr. Attorney General.*—My lord, I certainly thought that, civilly, Mr. Davison ought not to retain any part of that remuneration which he had received for performing a duty in which he had misconducted himself. I have hitherto not heard of any proposal upon that subject; but I certainly think that Mr. Davison ought to be called upon by the Crown to return the whole of that compensation. I cannot impute any thing to him for not having offered to do it, as there has not been time. But if between this and the next term any thing should be proposed, perhaps your lordship will permit me to state it then.

*Lord Ellenborough.*—We were induced to mention this, particularly from what fell from Mr. Dallas with respect to the case of the King against Munton. By discharging the rule for bringing up Mr. Davison to-morrow, and by bringing him up on the seventh day of next term, time will be allowed for our hearing something upon these subjects.

*Court of King's Bench, April 27th, 49 Geo. 3, A. D. 1809.*

*Mr. Attorney General.*—I move for the judgment of the Court against Alexander Davison, Esq. I should state to your lordship what I believe has been communicated to the Court—that in consequence of what passed on a former occasion, Mr. Davison has paid into the Exchequer eighteen thousand pounds, which is the amount of all the commission which he has received upon these contracts.

*Mr. Justice Gross.*—The entry has been laid before us *Mr. Attorney General.*—Alexander Davison, you are to receive the sentence of this Court, having been convicted of different offences which are specified in the information that has been filed against you by his majesty's attorney-general.

In that information we find it charged that you were employed on behalf of his majesty to

purchase barrack stores, for the use of his military forces, as an agent; for which you were to be paid a commission at the rate of two and a half per cent on the amount of the prices of the stores to be purchased; which commission was to be the sole emolument (and ample it seems to have been) to be received by you in that behalf; and which employment was an employment of great public trust and confidence. In this employment, it is charged, that you, intending to defraud the king, at the time mentioned in the information, delivered large quantities of barrack stores at prices amounting to 15,136*l.* 9*s.* 9*d.* as stores purchased by you as agent for such commission; and that those stores were not purchased by you as agent, for such commission; but were made and manufactured by you and were the property of yourself.

It is further charged that you did fraudulently produce and deliver in the office of Oliver De Lancey, Esq. (he then being his majesty's barrack-master-general) divers false, fraudulent and deceitful paper writings, as and for proofs and vouchers that you had purchased those stores from one George Watson; that is to say, paper writings as invoices or bills of parcels, wherein you are made debtor to Watson for divers articles of barrack stores specified in the information at the prices therein specified, amounting to the prices therein mentioned; and another paper writing as an abstract of the said invoices or bills of parcels amounting to the sum of 15,136*l.* 9*s.* 9*d.*, and also certain false fraudulent and deceitful paper writings, as proofs and vouchers that you had paid to one John Allen, for the use of the said George Watson the sum of 15,136*l.* 9*s.* 9*d.*: that you, by means of these several premises, fraudulently procured the barrack-master-general to allow you, in account, the sum of 378*l.* 8*s.* 3*d.*, as and for your commission upon the sums so pretended to have been paid as the amount of the prices of the said stores so delivered by you, over and above the amount of the pretended prices thereof. The information, in this first count, then avers that you had not purchased the said stores or any part thereof of the said George Watson or John Allen, or any other person or persons; and had not paid, or contracted and agreed to pay the said sum of 15,136*l.* 9*s.* 9*d.*, or any other sum of money for the price or purchase of these stores or any part thereof.

Such is the substance of the first count. The three next counts are framed upon the same transaction, varied only in the form of charging it. The four next counts are founded upon a like fraud in the half-yearly account from the 25th of June to the 24th day of December following, in which the pretended prices amounted to 11,272*l.* 19*s.* 2*d.*, and the commission allowed to you to 231*l.* 16*s.* 5*d.* The rest of the counts are formed upon the other half-yearly accounts charging similar frauds, and the allowance of different sums of commission on supposed purchases. Upon this information,

on a plea of Not Guilty, after a trial in which the facts were satisfactorily proved, you have been found Guilty.

The sum of your offence is very accurately described in the different counts of the information. It is, that you, receiving a stipend from the king to check the frauds of others, to prevent extortion, and ensure the best commodities at the cheapest rate, became the tradesman and seller of the article, and had thereby an interest to increase your own profit and to commit that fraud which it was your duty to prevent. It is in order that those who sell to the public may deliver the articles at the lowest price at which they can be charged and of the best quality, that a person who is supposed to have no interest either in delivering articles fewer in number or inferior in quality, is allowed to receive a commission by way of percentage upon the price of the articles: and a man who, in these respects, does his duty has no interest in permitting a worse commodity to be delivered for a better, or in allowing the tradesmen to enrich themselves at the expense of the public. To prevent this very mischief the public placed you in the office, and paid you a commission, hoping that you would prevent that fraud which avarice and the base thirst of lucre might prompt persons to commit: instead of that, you became a seller interested to deliver the worst articles at the highest price. Your office, therefore, became useless and your commission misapplied. You placed yourself in a state of temptation which human nature found it too difficult to resist—that of charging an high price for the worst commodities and committing the frauds and abuses which your office was instituted and you were paid to prevent. If the frailty of your nature and your appetite for ill-gotten wealth rendered you unequal to the resistance of this temptation, your rank and situation in life, and your respect for the comfort of your family should have induced you to pause before you permitted their feelings to be tortured by the disgrace and shame in which such a transaction must immediately involve you, and which might eventually affect them.

I have shortly stated the offence as consisting in the fraud committed on the public by pursuing the method which you adopted; namely, instead of an agent or factor for the public, you became a tradesman. But this of-

fence is greatly aggravated by the means adopted to carry, with the least chance of detection, this fraud into execution. You must be conscious that I allude to the base fabrication of the documents. Your clerk, aware of the consequences of stating the real fact in the account, reminded you that you would appear, as in reality you were, both buyer and seller: he was correct in this observation; and you immediately ordered that bills of parcels should be made out in Watson's name, and they were so made out accordingly. I do not say that this was a forgery in the eye of the law; but if it was not forging the name of another with intent to defraud, it was at least using his signature for that purpose. It also resembles very closely another offence—that of obtaining money under false pretences—but it is not precisely that crime. For one of these crimes the punishment that might be inflicted is death, for the other transportation.

That you have paid into the Exchequer the sum of 18,883*l.* 13*s.* 1*d.*, which is the amount of the commission received by you for your employment under general De Lancey is signified in the paper now before me; and in the apportionment of punishment we shall take this into our consideration: but this is by no means a sufficient expiation of your offence. The loss which the public and the country may have suffered by what may have been produced by your raising artfully and unnecessarily the price of the commodity, as the doing so might be convenient for your purposes, has not been ascertained; and, therefore, that which you have paid is more in the nature of a debt to the public. For this offence justice demands a farther sentence which may operate as a punishment upon you, and as an example to others.

For this offence, therefore, founded in a dishonourable thirst of lucre, in a breach of public trust and confidence, aimed at the vitals of the state, and affecting the interests of all ranks of persons, for all ranks of persons must directly or indirectly contribute to the public burthens, this Court, taking into consideration the sum you have already paid, and the imprisonment you have already suffered, orders that you be committed to his majesty's gaol of Newgate, and be there imprisoned for twenty-one calendar months, and that at the expiration of that period you be discharged.



683. Trial of VALENTINE JONES, Esq., sometime Commissary General in the West Indies, for a Misdemeanor; before the Right Hon. Edward Lord Ellenborough and a Special Jury, at Westminster, May 26th: 49 GEORGE III. A. D. 1809.\*

THE following is an abstract of the Indictment.

1st Count—Charges—That the defendant held the office of commissary-general of stores, provisions, and forage, to the king's forces serving in the king's Leeward Caribbee Islands, and the several other islands and countries in the king's possession in the West Indies to the windward of St. Domingo.

And also, the office of superintendant and director of forage, provisions, necessaries, and extraordinaries of the said forces (to wit), at Westminster, in the county of Middlesex.

That the said offices were offices of great trust and confidence, concerning the providing vessels, stores, provisions, liquors, and other things for the use of the forces.

That in respect of the execution thereof, certain reasonable salaries and pay were payable, and paid to the defendant by the king.

That it was the defendant's duty to provide such vessels, stores, &c., in the most economical manner, and at the least expense to the king, and not to have or receive to himself any part or share of any gains or profits made by any person employed by him as such commissary, superintendant, and director, to furnish or supply such vessels, stores, &c., by or by means of the furnishing or supplying thereof (to wit) at Westminster, in the county of Middlesex.

That the defendant, disregarding the duties of his said offices, and unlawfully and corruptly intending to cheat and defraud the king, and to make an undue and unlawful profit and advantage to himself in the execution and exercise of his said offices, did in the execution and exercise of his said office, heretofore (to wit) on the first of May, 1796, at Westminster, in the county of Middlesex; unlawfully and corruptly bargain and agree with Matthew Higgins, that he (Higgins) should pay and allow to him a certain part and share of the profits and gains, to be made by him, by means of his furnishing and supplying under the defendant's authority, as such commissary, and superintendant, and director, divers vessels, stores, provisions, liquors, and other things, to be provided by the defendant, as such commissary, superintendant, and director, in the execution of the duties of his said offices (that

is to say) that he (Higgins) should pay and allow to defendant one moiety of the said gains and profits.

And that defendant, as such commissary, superintendant, and director, did afterwards (to wit) on the day and year last, aforesaid, and on divers other days and times, after the said bargain, employ the said Matthew Higgins to furnish and supply, and said Matthew Higgins did actually furnish and supply under such employment, and under the defendant's authority, as such commissary, superintendant, and director, divers such vessels, stores, provisions, liquors, and other things as aforesaid (to wit), at Westminster, in the county of Middlesex, and did thereby, then and there, make divers large gains and profits.

And that in pursuance of the said unlawful and corrupt bargain, the defendant further disregarding his said duties, and unlawfully and corruptly intending as aforesaid, did in the execution and exercise of his said offices, afterwards (that is to say) on the 31st March, 1797 (to wit), at Westminster, in the county of Middlesex, unlawfully and corruptly have and receive to his own use of and from the said Matthew Higgins, a certain large sum of money of a certain foreign currency (to wit), Leeward Island currency (to wit), the sum of 153,273*l.* 17*s.* 10*d.* of such money being of the value of a large sum of money (to wit) of the sum of 87,179*l.* 5*s.* of lawful money of Great Britain, on account of his (the defendant's) said part and share of the said gains and profits.

That in further pursuance of said unlawful and corrupt bargain, the defendant further disregarding his said duties, and unlawfully and corruptly intending as aforesaid, did in the execution and exercise of his said offices, afterwards (to wit) on the said 31st March, 1797 (to wit), at Westminster, in the county of Middlesex, unlawfully and corruptly keep and retain to his own use, out of divers sums of money, then and there payable by him, the defendant, to said Matthew Higgins, a large sum of money of a foreign currency (to wit), Leeward Island currency (to wit) the sum of 153,273*l.* 17*s.* 10*d.* of such money being of the value of a large sum of money (to wit) of the sum of 87,179*l.* 5*s.* of lawful money of Great Britain, on account of his (defendant's) said part and share of the said gains and profits.

Contrary to his duty as such commissary, and superintendant, and director, as aforesaid. To the great damage and deceit of the king.

\* Now first published from Mr. Gurney's short-hand notes. Some preliminary proceedings in this case are reported in 8 East 31.

In contempt, &c. To the evil example, &c. And against the peace, &c.

*2nd Count*—That defendant employed Higgins to furnish, and that he did furnish vessels, stores, &c., and thereby made great gains and profits. That defendant, in pursuance of an unlawful and corrupt agreement in that behalf, theretofore made between him and Higgins, did receive to his own use from Higgins a moiety of the said gains and profits (to wit) 87,179*l.* 5*s.*

*3rd Count*—That defendant in pursuance of a like agreement, did keep and retain to his own use out of monies payable by him to Higgins 87,179*l.* 5*s.* As a share of the said gains and profits.

*4th Count*—That defendant bargained with Higgins, that he should be permitted to furnish &c. And that in consideration thereof, Higgins should pay and allow to him a moiety of the gains and profits; that Higgins did furnish, &c.; and made great gains and profits. That defendant received 87,179*l.* 5*s.* on account of his share and retained same out of money payable by him to Higgins, in pursuance of such bargain.

*5th Count*—Similar to the first, including other mercantile transactions.

*6th Count*—Similar to the 4th, only that the defendant should share the profits to be made by Higgins, as well by furnishing ships and vessels, as by furnishing any stores, provisions, or other things for the use of the forces, that he might be employed by defendant to furnish, and by other mercantile transactions.

*7th Count*—Similar to the 6th, only omitting other mercantile transactions, and not charging that his moiety of the profits was in consideration of being employed to furnish the vessels.

*8th Count*—That Higgins had been employed to furnish ships and vessels, and was desirous of continuing so to do, under the permission of the defendant. That defendant corruptly asked and demanded for his own use, of Higgins, a moiety of the profits to be made by his being permitted so to do, as a consideration and reward for his permission.

All the above 8 counts charge the defendant as holding the offices of commissary, and superintendent, and director.

The second set of 8 counts, viz. the 9th 10th 11th 12th 13th 14th 15th and 16th, also charge him as holding both offices, differing from the first 8 only by charging the offences to have been committed under colour of his offices. Whereas the first 8 charge them to have been committed in the execution and exercise of his offices.

The third set of counts, viz. 17th 18th 19th 20th 21st 22nd 23rd and 24th, charge the defendant as superintendent only. And the offences to have been committed in the execution and exercise of that office.

The fourth set of counts, viz. 25th 26th 27th 28th 29th 30th 31st and 32nd, the like, under colour, &c.

The fifth set of counts, viz. 33rd 34th 35th 36th 37th 38th 39th and 40th, charge the defendant as commissary only—in execution and exercise.

The sixth set of counts, viz. 41st 42nd 43rd 44th 45th 46th 47th and 48th, the like, under colour, &c.

The Indictment was opened by Mr. Richardson.

Mr. Attorney-General [sir Vicary Gibbs, afterwards lord chief justice of the Common Pleas.]

May it please your lordship.—Gentlemen of the Jury;—It is now my duty to state to you somewhat more in detail the nature of the charge which is brought against Mr. Valentine Jones, who formerly filled a public office in the West Indies. It is impossible that you can be ignorant of the complaints which are in every one's mouth, of the abuses that have been practised in that part of the world; I do not refer to them for the purpose of raising any prejudice in your minds against Mr. Jones, but rather to guard you against the effects of any such prejudice. You are to try this cause by the facts which I shall prove; and if I did not think, without taking advantage of such preconceived opinions in the minds of men—if I did not think, that by evidence pointing directly at him, I should be able to bring this charge directly home to him, I should never have filed the present information. I desire you will try this cause by the evidence I shall adduce against him, and not by any loose reports you may have heard elsewhere. I hope my learned friends who are of counsel for the defendant, will agree that I do Mr. Jones ample justice in the manner in which I desire you to consider his case.

Gentlemen, this arises from the very nature of such transactions as those for which Mr. Jones is impeached; that taking place at a distance from the eye of those who have an immediate interest in preventing any improper practices, frauds are easily committed; and it is very difficult when they have been committed to detect them, and I am afraid it is in human nature, more readily to engage in fraudulent transactions which have this ease in their commission and this difficulty in their discovery. That I fear you will find to have been the case with Mr. Jones.

Now, I will shortly state what his duties were—how he published and how he abused them. In the year 1795, he was sent out with a very large trust reposed in him. The expenditure of this country in providing for our army in the West Indies is, and must be enormous—the vessels that are to be provided for conveying the troops from one place to another, and the provisions which are supplied to those troops must be procured at a very considerable expense; the whole of this expenditure was entrusted to the superintendence of Mr. Jones. In his character of com-

missary and superintendant, it was his duty to hire such vessels as should be wanted for the troops; it was his duty to supply them with such provisions as they should have occasion for; and it was his duty to render to government an account of the manner in which he performed this trust. He had a certain compensation allowed to him by government, and beyond that he could legally be entitled to no profit or advantage whatever. He was well aware of what his duties were—they were not only pointed out to him by the two commissions which he received; the commission of commissary-general, and of superintendant; but the instructions that accompanied these commissions, pointed them out more specifically; and besides this, a letter which he received from a right honourable gentleman then in office, and who I now see sitting on the bench, ought at least to have guarded him more especially against the commission of those frauds which this day I shall most surely fix upon him by the most incontrovertible evidence.

After he had received his commissions in the year 1795, and the general instructions which accompanied them, Mr. Rose, who was then secretary to the treasury, wrote to him in the following terms:—"Sir, I am commanded by the lords commissioners of his majesty's treasury to acquaint you that his majesty has been pleased to grant pay to you and to the deputies and assistants under you, according to the following establishment." Commissary-general, from the treasury 2*l*. The war-office 3*l*., total 5*l*.—Mr. Valentine Jones." The allowance to Mr. Valentine Jones was 5*l*. a day. Then follow the allowances to the deputy commissary and assistants. The letter proceeds thus, "And their lordships expect neither you or they" (that is the assistants) "shall derive the smallest advantage, in any shape or mode whatever, from your situation beyond the pay above stated, except the regular allowances of provisions and the articles usually furnished from the departments of the quarter-master-general, and barrack-master-general.

"My lords are fully persuaded from your past conduct, which recommended you to their notice for your present appointment, that you will scrupulously conform yourself to this regulation; but they think it necessary on their part, it should be distinctly understood by every person in your department, that if any one shall be found to have profited in any manner, directly or indirectly, contrary to the strict injunction hereby communicated to you, instant dismission will be the consequence, without the possibility of the offending party being afterwards employed in any public situation. If in the course of the service, a necessity shall arise for your making any disbursement for office rent, travelling charges or other unforeseen expences, it is their lordships pleasure that you should communicate the same to the commander-in-chief, and re-

ceive his authority and approbation of the amount of the expence, in order to your charging the same in your accounts."—Then the mode is pointed out by which this pay is to be drawn.

These instructions made a very deep impression upon the mind of the defendant. He was sensible that it was of importance to the public, that these instructions should be observed; he noted that part of them which enjoins him to take care, that those who were under him did not make any profit from their employments, beyond that of the regular pay, allowed to them by their commissions, and this he communicated to them in a letter which I am now about to read to you, which he addressed to Mr. Michael Sutton, who was his assistant commissary. Having given him some directions upon the duties which he was to perform, he adds, "on the scale of improvement, however, of regulation or of reform, economy must not be forgotten, and you can in no wise better recommend yourself for approbation, than by the proper application of the funds, entrusted at any time to you, and the frugal expenditure of public money." "I am charged with one very particular and private instruction, relative to my department which it is necessary to communicate, and I think it right to close this letter therewith, in order to take this, the first opportunity I have had of imparting the same to you, as one of the assistant commissaries—it runs in the following terms.—"The lords commissioners of his majesty's treasury expect that neither you nor the deputies, and assistants under you, shall derive the smallest advantage in any shape or mode whatever, from your situations, beyond the stated pay, except the regular allowances of provisions, and the articles usually furnished from the departments of the quarter-master-general, and barrack-master-general.—My lords think it necessary on their part it should be distinctly understood, by every person in your department, that if any one shall be found to have profited in any manner, directly or indirectly, contrary to the strict injunctions hereby communicated to you, immediate dismission will be the consequence, without a possibility of the offending party being ever afterwards employed in any public situation."

It was the duty of Mr. Jones to have conducted himself in the manner that is recommended to him by these instructions; those whose duty it was in this country to see that the services of Mr. Jones were properly performed, did not feel themselves justified in trusting to the general impression which he might entertain, as to the duties connected with the service committed to him; they sent him those instructions which he, receiving, felt the importance of, and he felt the importance of communicating them in the strongest terms and with the strongest recommendation of observance to those who acted under him.

I now proceed to state to you—and it is a

painful part of my duty—how immediately—how grossly — how scandalously—when he had an interest in breaking through them himself, he either lost sight of them, or openly and professedly violated them.

Before Mr. Jones arrived, invested with this authority, in the West Indies, the orders for supplying the troops with what they wanted, had fallen upon the commander in chief, brigadier-general Knox. And Mr. Matthew Higgins, of whom you will hear a great deal in this cause, and who will be called as a witness, had been employed by brigadier-general Knox, in supplying such vessels as were wanted by the troops in the West Indies. When Mr. Higgins found, that Mr. Valentine Jones was coming out in the character of commissary general, he apprehended that this contract might be taken from him. There was in the West Indies another gentleman, Mr. Hugh Rose, who acted in the character of deputy paymaster, and who was supposed to be connected in some way with Mr. Jones.—Mr. Higgins made application to Mr. Rose, desiring he would use his influence with Mr. Jones, to prevent him (Mr. Higgins) from being removed from the employment of supplying vessels for the use of the army.—Mr. Rose promised Mr. Higgins his good offices upon that subject.—I believe, after that time, Mr. Higgins and Mr. Rose went to Demerara; on their return, Mr. Higgins saw Mr. Rose on board a vessel, in which Mr. Jones also was; he saw Mr. Rose alone; he conversed with him again upon this subject, Mr. Rose told him that he had made the application which he desired to Mr. Jones, that he had added to it a request, that he (Higgins) might have a preference in supplying the troops with provisions (for his contract under general Knox went only to hiring vessels for them); and he told him likewise that he had come to this agreement with Mr. Jones, *that he (Higgins) should be continued in his former employment of supplying vessels, and that he should likewise have a preference in supplying the troops with rum, flour, beef, and such other provisions, as they might want; and that he, and Higgins, should divide the profits, which he made upon the whole of these adventures in the following way, that Mr. Jones should derive one half of the full profits, and that Mr. Higgins should divide the other half between himself and Mr. Hugh Rose: so that you see, upon this agreement, the full profits of the whole adventure were first to be divided in half, and Mr. Jones the commissary, was to take one half, and then the remaining half was to be again divided between Mr. Higgins the merchant, and Mr. Hugh Rose, who was the go-between between him and Mr. Jones, the commissary.*

Gentlemen, it would, indeed, be mis-spending your time to enlarge upon the profligacy of such a contract on the part of Mr. Jones. Mr. Jones is sent out to establish a system of economy in the West Indies, to correct abuses that had before existed there; he was placed

in a situation, in which it was his peculiar, and only business, to see that government in all those transactions, which fell under his care, was provided on the most economical terms. It needs, I think, no explanation to convince you, that where the person who is to supply government, shares his profits by giving three fourths of them to others, if that division were not made, he would furnish government at a price less than that at which he did furnish them, by the deduction of this three fourths, which he does thus make over to others. For he is, at last, himself content with one fourth of the profits that are made; and if these harpies did not interpose and carry off the remaining three fourths, government would have had the benefit of them, by the supplies being charged at so much less.

But that is not all, that is not the great grievance of which I complain on behalf of government; it is not that Mr. Jones intercepts those profits, which the merchant would otherwise make, but that being sent out with a pay of 5*l.* a day for the purpose of correcting abuses, for the purpose of seeing that government is provided on the most economical terms, he creates to himself a personal interest to defraud government; and, taking to himself the profit that is made by those provisions supplied to the troops, he gives to himself a direct interest to admit of the highest charges that can be made, for supplying those troops; because the higher the charge, the greater the profit which he is at last to share with the contractor who furnishes the provisions. You see in every way this injures the public, who are unprotected, and undefended from his fraud. In the first place he takes this sum from the public.—In the next place, he divests himself of all possibility of correcting abuses, creating in himself an interest to raise these charges to the highest possible amount, in order that his profits may be raised in proportion.

And now, gentlemen, let me in few words state the result of this. From May or June, 1796, to the 31st of March, 1797, this traffic was carried on; accounts were then settled between Mr. Higgins and Mr. Jones; and Mr. Jones was to have credit for the moiety of Mr. Higgins's profit. The whole adventure was not now wound up; there was a small part remaining; but upon that which was then wound up, and settled between them, (I am giving it to you now in West India currency in which the accounts were kept) Mr. Jones's moiety of the profits made by Mr. Higgins for ten months, amounted to 153,273*l.* 17*s.* 10*d.* In sterling money it amounts to somewhat above 87,000*l.* A moiety of the profits made by this merchant, whose frauds are thus connived at by Mr. Jones, in ten months amounts to more than 87,000*l.* sterling, and that sum Mr. Jones actually received. And you see that not only are the frauds, and over-charges of Mr. Higgins in this account connived at by Mr.

Jones (for that, though highly criminal, he might have some excuse as not savoring of self interest), but they are actually invited by Mr. Jones. Mr. Higgins is exhorted to do that which he did, by the encouragement held out to him by Mr. Jones, who becomes a participator in the profits which Higgins was to make by this adventure.

Gentlemen, I told you I would state generally and shortly what these profits were, I will now state it with somewhat more particularity, as extracted from Mr. Higgins's books kept at the time in the West Indies, which will be to-day produced, and which Mr. Higgins will verify. This is Mr. Higgins's ledger; in this ledger and in the accuracy of the accounts contained in it, Mr. Jones had an interest, because he was to share the profits which upon the result of these accounts appear to have been made. Mr. Jones in the progress of this business had the curiosity to see that this 87,000*l.* sterling was all that was due to him; he chose to see that Mr. Higgins had not made larger profits than would leave to him when they were divided in equal shares 87,000*l.*; and he did see the accounts, he saw that all was fair and just, that the whole profits were not more than 300,000*l.* odd, currency; and consequently that his moiety of the profits was not more than 153,000*l.* odd, currency. I have stated that this is Mr. Higgins's ledger. Now the first article in it is, "*With the Commissary-general.*"—And on the debtor side, here is an account of all that Mr. Higgins furnishes, on account of the commissary-general; all that he pays for the hire of vessels; all that he charges for the provisions that he supplies the troops with; and the balance due to Mr. Higgins upon this account is 247,442*l.* 10*s.* 10*d.*; the expenditure is something more than a million; the sums with which Mr. Higgins charges the commissary, for the hire of vessels, and for provisions supplied, is something more than a million, but the sum that remains due to him, after taking credit for the payments he had received, is 247,442*l.* 10*s.* 10*d.* That sum, therefore, you see, the commissary-general was to pay to him; that sum the commissary-general owed to Higgins for supplies. This is to be wiped off. It is wiped off by two articles, in one of them, the entry is, Matthew Higgins, 153,273*l.* 17*s.* 10*d.* Matthew Higgins takes to himself so much of the debt. How is this to be explained? Why should Matthew Higgins take this 153,273*l.* 17*s.* 10*d.* upon himself? Another part of the account explains that:—There is in this, as in all mercantile accounts, an account of profit and loss upon the public adventure. Upon all his concerns with government there is profit and loss; that profit and loss as it appears upon the account is not summed up, but we have taken the trouble of summing up the debtor and the creditor side of this profit and loss, and we find that it leaves a balance of profit to Matthew Higgins, as you may suppose, of

306,547*l.* 15*s.* 8*d.* That sum it may be convenient to you to take down; and if you will take the trouble of dividing that sum by two, you will find that the moiety of it is exactly 153,273*l.* 17*s.* 10*d.*: and when you find that Matthew Higgins charges himself with that sum, the thing becomes perfectly intelligible; because it was agreed between them that Matthew Higgins should pay to Jones one moiety of the clear profit that he made: and when you find that the clear profit that was made was, by his own account, 306,547*l.* 15*s.* 8*d.*; and when you find that the moiety of that was 153,273*l.* 17*s.* 10*d.*; and when you find that in the general account with Jones he charges himself with 153,273*l.* 17*s.* 10*d.*, the account is perfectly clear; then you see that he is fulfilling the engagement which he had entered into with Jones, by ascribing to him one half of the clear profits that he made upon the whole adventure.

Of this sum Mr. Jones had the benefit; for in March, 1797, when Mr. Higgins was about to return from the West Indies, he was desirous of settling his accounts with Mr. Jones; he did settle them accordingly, and this balance was struck. It is fit I should state to you, that there was a person of the name of Nathaniel Winter, who had very much the superintendence of these accounts of Mr. Higgins's, which I believe were kept principally by a man of the name of William Winter:—however, Nathaniel Winter had constant access to them; he knew from Mr. Higgins that this agreement had been entered into between Mr. Jones and Mr. Higgins; he knew upon what terms this balance was to be struck, and the account settled; and he was told by Mr. Higgins that Mr. Jones would call upon him for the purpose of inquiring from him, and referring to his knowledge upon the subject, what the profits really were that Mr. Higgins had made. Accordingly Mr. Jones did call upon him for the purpose of asking him what these profits were, and Mr. Nathaniel Winter (whom I shall call to you as a witness to day) will tell you, that he either verbally related or delivered in writing (but he rather thinks he delivered in writing) to Mr. Jones the account of those profits made by Mr. Higgins as I have now stated them to you. He is sure that he communicated to him the amount of the profits.

Now, let me pause here for a moment. Mr. Higgins will state to you these transactions, as I have now detailed them to you. If Mr. Higgins relates a true account of the transaction to you, Mr. Jones is immediately convicted. For no man will stand up in a court of law, and say that this transaction is legal. No man, and less than any man, my learned friend who sits by me, will state to you that a man employed by government, as Mr. Jones was, is not guilty of the highest misdemeanor in entering into an agreement with a contractor, that he shall share the profits with him. If, therefore, Mr. Higgins, who will swear that

he did enter into this contract with Mr. Jones, is to be believed, there is an end of Mr. Jones's case.

But I am not unacquainted with the arguments my learned friend is likely to use for the purpose of taking from Mr. Higgins's credit. He will tell you that Mr. Higgins is an accomplice in this business; that he is himself guilty of the fraud he imputes to Mr. Jones; and that he comes here for the purpose of screening himself from that punishment which would otherwise await him. For what offence? For conspiring with Mr. Jones to defraud the public! What does he screen himself from? If Mr. Jones is not guilty, Mr. Higgins is innocent; and he comes here to lead himself with an offence which, unless Jones be guilty, he Higgins cannot be charged with. It is not like the case of a man who, being detected in a robbery, comes forward and says, "If you will let me off I will tell you who the other person was that was with me;"—he comes forward, it being known that he had himself committed the robbery, to throw a share of the guilt and all the punishment upon another person. As his guilt is proved substantively—that he committed the robbery is clear. But here the charge against Mr. Higgins is, that he acted in collusion with Mr. Jones, and unless Higgins did act in collusion with Jones, he is guilty of no offence whatever. He, therefore, does not stand in the ordinary situation of an accomplice who comes to clear himself from guilt, which is fixed upon him, and from the punishment of which he is to shelter himself by charging another in the participation of his criminality; for unless Mr. Jones be guilty, nothing is fixed upon Mr. Higgins; and therefore Higgins comes forward to tell a story which he would be interested at this moment in suppressing, if it were not true; but supposing it necessary for me to confirm him, and supposing that you should hesitate upon the accuracy of his testimony—what say you to these accounts kept in the West Indies at the time?—entered up before there was any suspicion that any inquiry of this sort would ever be instituted, for it was some years after this transaction had been closed that the West India commission (of which I dare say you must all have heard) was ever thought of? It was not till after rumours had come home (and those rumours upon inquiry turned out to be well founded) of the gross frauds practised in the West Indies, that that commission was set on foot; there can be no possible charge against Higgins or those employed under him, of having fabricated these books with any view whatever. I shall prove them to have been in existence in the year 1797. I am stating to you the evidence of Nathaniel Winter.—Winter will tell you he communicated to Mr. Jones in the first place the amount of the profit and loss. Now that is the last thing that Mr. Higgins would ever have had communicated to Mr. Jones, if there had not been a fraudulent agreement between

them. If there had been no fraudulent agreement between them, their interests upon that subject would have been at variance. Mr. Jones's interest was, to make Mr. Higgins serve the public at as low a price as he could; Mr. Higgins's interest was, to get as high a price as he could. And Mr. Jones has no more right to call upon Mr. Higgins for an account of his profit and loss, than I have a right to call upon you, to know in the course of your trade what profits your house made last year. It is not therefore referable to any question of profit or loss, that Mr. Jones should ever require of Mr. Higgins that account, or that Higgins should render that account; and yet Nathaniel Winter will prove that he did, by the employment of Mr. Higgins, and on the application of Mr. Jones, render to Mr. Jones an account of the profits Higgins had made; which could be rendered upon no other ground than that Mr. Jones had an interest in those profits—that it was a partnership between them. And if Mr. Jones was to take any share in those profits, there is an end of his defence; it was foul and corrupt in him to take to himself any profits beyond the pay that was reserved to him.

I have been arguing now only upon the circumstance of his calling for an account of profit and loss, but here were the books. Nathaniel Winter gave him the account from these books; and Mr. Winter will farther tell you that, very soon after he had rendered this account to him of the 153,273*l.* 17*s.* 10*d.* as half the profits, he saw the books again; and he saw entered in those books, to the credit of Mr. Jones and to the debit of Mr. Higgins, this very sum of 153,273*l.* 17*s.* 10*d.* currency. What then becomes of any imputation that may be cast upon the credit of Mr. Higgins? What becomes of any attempt to persuade you that no credit is due to any account: he shall give? He will refer you to documents that cannot deceive; he will refer you to entries made in his books at the time, when it was his interest as much as it was Mr. Jones's, to conceal these transactions; and he will show you, upon the face of his own books, that at that time he had made out his own profit and loss, 306,547*l.* 15*s.* 8*d.* and gave credit for a moiety 153,273*l.* 17*s.* 10*d.* to Mr. Jones, and that Mr. Jones actually had the benefit of that credit.

But, gentlemen, wonderful as it may seem to you—for these things seemed to be developed almost by Providence—wonderful as it may seem to you, this is not all, nor even the strongest, evidence that I have in confirmation of Mr. Higgins's testimony. I told you that this 153,273*l.* 17*s.* 10*d.* was a moiety of those profits that were at that time liquidated;—that it constituted the greater part of the accounts:—but there were some items which, in so large a concern, had not then been gathered up and thrown into this account; those items remained to be settled, they arose chiefly out of what the parties chose to call the American adventure, and that American adventure

was of this description. The way in which money is drawn in the West Indies is this;—the commissary-general draws for what he wants, upon the lords of the Treasury:—the deputy paymaster, who was Hugh Rose, draws upon the Pay-office; and these bills, when drawn, are carried into the market and sold; and one great profit those persons made was in charging the exchange much lower than it really was.

Mr. Matthew Higgins, who had the negotiation of all these bills, thought they could be disposed of to more advantage in America, than upon the spot: and accordingly, he established a house in America, with a view only to the profit that could be made by sending those bills to be sold in America, and purchasing, with the produce of them, provisions which he might afterwards render to the troops in the West Indies. Accordingly, he did establish a house in America, consisting of the names of Bennett and Carey; and with that house at Philadelphia he transacted this business. What the profits were that arose out of that branch of the transaction, was not accurately known; for that house had not rendered their account in March, 1797, at the time when this settlement took place. That remained, therefore, as a matter of future inquiry and settlement. Accordingly, at a subsequent period, in 1800, when Nathaniel Winter and Higgins and Jones were in this country, a farther settlement was made.

It was found, that with reference to the large account, there were some things, which ought to have been but which had not been brought either to the debit or credit side of it, and this American adventure had been wholly omitted. Mr. Higgins therefore settles this farther account. The balance of the profits of this American adventure appears to be 5,372*l.* 7*s.* currency, of which Mr. Jones's moiety would have been 2,686*l.* 3*s.* 6*d.* currency, or in sterling money 1,534*l.* 19*s.* 1*d.* naturally therefore he would, in this country, have received that sum from Higgins; but there were some errors in the former account, amounting to about 1,411*l.* 8*s.* 8*d.*, of which his moiety was 705*l.* 14*s.* 4*d.*: and that sum being deducted from the 1,534*l.* 19*s.* 1*d.*, left due to Mr. Jones 829*l.* 5*s.* 9*d.*:—that, therefore was the sum which, upon this settlement and the subsequent account, remained due from Higgins to Jones upon this corrupt contract between them. That sum Mr. Higgins paid in to Mr. Jones's bankers, Mr. Jones having, previous to the payment, deposited at his bankers, a receipt for that sum; it was paid in by Nathaniel Winter, on behalf of Higgins, for Jones—Jones having deposited with his banker a receipt for that sum, which receipt Nathaniel Winter, when he paid the money, carried away with him, and that receipt I now hold in my hand and will read to you:—“*Received, February 26th, 1800, of Matthew Higgins, esq., by the hands of Nathaniel Winter, esq. Eight Hundred and Twenty-nine Pounds, Five Shillings*

*and Eight Pence, in full of Accounts between said Matthew Higgins and—VALENTINE JONES.*”—Money to be received by Jones from Higgins, “in full of accounts between them!”—What accounts could there be between them?

Let me suppose these gentlemen to have acted honestly. Mr. Jones was the commissary, Mr. Higgins was the merchant. Higgins was to supply the commissary with stores, he was to pay for the hire of vessels—money might be due from Jones to Higgins—it was impossible, in the ordinary course of things, that any thing could be due from Mr. Higgins to Mr. Jones. But, upon the balance of accounts between Mr. Higgins and Mr. Jones, here is a sum of 829*l.* 5*s.* 8*d.* actually paid by Higgins to Jones, and Jones's receipt is given for it in full of all accounts. Will Mr. Jones explain this? Will Mr. Jones give an account to you to-day how this debt arose? Will he show to you what the transactions were, and what the items of the account were, out of which this balance arose? Can he prove, that there were any regular mercantile transactions between him and Higgins? If he can, I shall be glad that he is able so to avert from himself the charge I am bringing against him—but I am sure it is impossible.

Mr. Higgins will not state to you that he entered into this agreement with Mr. Jones personally, but that he did it through the intervention of Hugh Rose. He will state, that Mr. Rose went, and personally communicated with Mr. Jones; and then stated to him (Mr. Higgins) what Mr. Jones had agreed to. He will state to you, that he received this conclusion of the agreement originally from Mr. Rose; that he afterwards saw Mr. Jones, and repeated it to him, and Mr. Jones acceded to it. Will Mr. Rose come forward to day, and deny this? I cannot question Mr. Rose. Mr. Rose will not be questioned by me. Mr. Rose keeps himself aloof. Mr. Rose answers no questions asked him on the part of the prosecution; but while I was uttering my last sentence to you, I was informed he has sent in word to the solicitor for the Treasury, that he is here. If he is here, Mr. Jones will have the full benefit of calling him as a witness; but a person connected with Mr. Jones and so conducting himself towards the crown, I am sure, I, on the part of the crown, shall not call as a witness for the prosecution; but if he chuses, in the course of my address to you, to send in word to me that he is here, I present him to his friends as a witness, whom they may call to discharge them from the guilt of which this indictment accuses them, and which Mr. Higgins by his testimony will fix upon them, and which Mr. Rose, if he be the witness of truth, and if Higgins's story be not true, can avert from them. But Mr. Rose having chosen to keep himself clear from all communication with—and having refused to furnish any information to, those who conduct this prosecution, I am sure there is no man who would think me fit to remain in the situa-

tion I hold it present, if I were to call Mr. Rose as a witness on the part of the prosecution, especially as, consistently with the story that I have told you, Mr. Rose would not be obliged to answer any question I may put to him, though he could have no reason for refusing (if it is not true) to answer any question the defendant may put to him. So stands the case upon the evidence I shall produce to you on behalf of the crown.

Gentlemen, there is one circumstance which I had forgotten. I stated to you that the balance due was 247,442*l.* 10*s.* 10*d.* currency, and that that was discharged, in part, by this 153,273*l.* 17*s.* 10*d.*; half the profits that were due from Higgins to Jones. The rest you know was to be discharged in some way; it is discharged by passing the remaining sum 94,164*l.* 13*s.* It is stated in the accounts—"By Hugh Rose a discount." The word discount, in these accounts, means setting it on the other side; discharging the account of so much. You will find that in Hugh Rose's account with Mr. Higgins, in this same book, Hugh Rose is made debtor to Higgins in that precise sum. I have Hugh Rose's account in another part of the book open before me, in which he is made debtor to the commissary-general 94,164*l.* 13*s.*; that is the way in which the whole balance of 153,473*l.* 17*s.* 10*d.* is made out—Hugh Rose debited for 94,164*l.* 13*s.* And Higgins for 153,273*l.* 17*s.* 10*d.*

Gentlemen, I had it in my mind once to have gone into a more ample detail of this subject. I have stated to you, that there is an account of the commissary-general with Mr. Higgins, in which Mr. Higgins takes credit to himself for all the articles that he supplied Mr. Jones with; and for all those articles Mr. Jones had credit with government: and I certainly could have shown you that these charges were beyond the market price of the article in the West Indies, infinitely beyond it. After I had, with some labour, gone into an inquiry of a good deal of evidence of that sort, it did occur to me at last to say to myself; "What am I doing here? I have, in the first instance, proved that the profits in ten months are 306,547*l.* 15*s.* 8*d.* currency; and then I am going to show that the particular charges are larger than they ought to be." Why, when I have shown that the profits are 306,547*l.* 15*s.* 8*d.*, to be sure, that would be a very idle labour; and I was glad to find the labour I had bestowed upon the subject was useless, because I then found I should be under no necessity of imposing that labour upon you.

I have now stated to you, I hope satisfactorily (it is a difficult thing to state figures, and if any few of them happen to escape your memory in statement it may confuse your minds), how I mean to fix this charge upon Mr. Jones. I will next state to you, out of Mr. Jones's mouth, what sense he had of his own conduct, how little he thought it would stand an accurate inquiry, and what instruc-

tions he felt it necessary to give to those who were left behind him in the West Indies, in case they should be questioned upon any part of these transactions, which should appear to them upon facts lying within their knowledge to press hard upon Mr. Jones.

Mr. Jones had been examined before the West India commissioners; and he writes to John Glassford, esq., who was his successor in the West Indies, a letter from Bath on the 3rd of December, 1802, in which he complains of the cruelty that he had experienced, in the manner in which the examination had been carried on against him; he tells ~~him~~ that every advantage will be taken of him. He says, "With respect to my Provision accounts generally, I have no doubt but many questions will be put to you." He states first, "that commissioners are coming out to investigate those accounts in the West Indies, and will probably have arrived before this letter, which I send by a merchant ship." He says, "with respect to my Provision accounts generally, I have no doubt but many questions will be put to you, but for heaven's sake do not be unmodelling them again, as they cost me more pains and trouble than I ever had in any business in my life, and they would desire no better than to perplex me more: if you can make them better or you can supply any deficiencies that I may seem to have made, I should be obliged; but do not make any observations on my general abstract being of different form from any state of yours. Nor would I wish it to be known that I had written to you about it; not that I should fear fair and candid investigation; and I trust you are, as well as myself, conscious that our proceedings had not the evil intention that our judges believe; but I have already seen too much ill-will on this side the water, not to suspect foul play on the other." Then he furnishes his correspondent with the means of avoiding the effect of any foul play that may be practised upon him, for he says—"On the whole, you have one general answer in your power, which is, that you cannot remember points of business so long gone by."

Now, gentlemen, do I put an unfair or an uncandid construction upon this letter, written by the defendant himself, when I say, that in suggesting to his successor, who was then commissary-general, that he had one general answer in his power, which was, that he "cannot remember points of business so long gone by," he means to suggest, that if your memory should furnish any thing to you which you think will bear hard upon me, instead of letting it out, plead that it has escaped your recollection? For with respect to those things, that Mr. Glassford really might not remember, surely it was not necessary for Mr. Jones to suggest to him that he had this general answer to give; for that is the answer Mr. Glassford must have given, where he actually forgot the transaction about which he was questioned: But if Mr. Jones knew that Mr.



Glassford must remember many facts that would bear hard upon him, and wished to persuade Mr. Glassford not to state those facts to the commissioners, when questioned upon them, is there any better advice that he could have given to him, than that which is contained in this sentence. "On the whole, you have one general answer in your power, which is, that you cannot remember points of business so long gone by:"—Suggesting to him a frailty of memory which he was afraid Mr. Glassford would not be sensible of himself.

Could this letter be written by a man, who was conscious of the rectitude of his own conduct? Could this letter be written by one who did not know that there lay within the knowledge of the person to whom he was writing, facts which, if disclosed, would be highly detrimental to the interest of him who was writing? Is it possible to reconcile this with any thing, but a consciousness, on the part of Mr. Jones, that Mr. Glassford was acquainted with so much of these transactions as would fix upon him (Mr. Jones) the guilt which I this day impute to him, if Mr. Glassford gave an honest and fair account of what lay within his knowledge? I wish not to press this beyond that construction which the expressions used by Mr. Jones fairly admit; I desire you to consider them with all liberality towards Mr. Jones; and if you can find any sense consistent with innocence, do so, and let it operate in his favor; but I confess, it appears to me to be impossible to reconcile this letter to a correspondent in the West Indies, with any thing but a consciousness that this person was acquainted with facts, the disclosure of which would be fatal to Mr. Jones's interest.

I think I have now stated all which, in the outset of this business, it is necessary to lay before you. The charge against Mr. Jones is this; that it was his duty to content himself with the five pounds a day, which by his commission was granted; that he had a particular and especial notice from the right honourable gentleman sitting by his lordship, that he was to content himself with that, and that if he received any further emoluments his offence would be visited with the utmost severity. That this information made an impression upon his mind, appears from the letter written by him to those whom it was his duty to control and to watch. I have stated that soon after his arrival in the West Indies, upon an application by Mr. Higgins to Mr. Rose, and by Mr. Rose to Mr. Jones, he entered into this contract which I detailed to you afterwards more at large. I have stated, that it appears upon the accounts of Mr. Higgins, and will be sworn to by him personally, that that contract for dividing the profits between him and Mr. Jones was carried into execution; that Mr. Jones actually had credit for that 153,273*l.* 17*s.* 10*d.* currency on account of one moiety of the profits; and that did not comprehend the whole; for there was the Ameri-

can adventure, and some other loose items outstanding, upon which there was a sum of money due to Mr. Jones, which was paid by Mr. Higgins to Mr. Jones's banker; which can be ascribed to nothing but that to which Higgins will, by his evidence, ascribe it. I have stated what the conduct of Mr. Jones was when these transactions were investigated; how he addressed a letter to his successor, which he supposed would never meet the public eye, desiring him to conceal as far as he could from the commissioners, any thing which might seem to bear hard upon him, Mr. Jones. This is the outline of the evidence: I have no doubt that the facts will be proved in the manner I have stated, and if they are proved, you will have no hesitation in saying that he is guilty of this offence.

#### EVIDENCE FOR THE CROWN.

The counsel for the Defendant admitted to have received notice from Mr. Litchfield to produce certain original papers.

[The following documents were read:]

His Majesty's warrant, dated September 1st, 1795, appointing Valentine Jones, esquire, to be superintendant and director of forage, provisions, necessaries, and extraordinaries of his majesty's forces then serving in the West Indies.

Another warrant from his majesty, of the same date, appointing Valentine Jones, esq. commissary-general of stores, provisions, and forage, to his majesty's forces in the West Indies.

[The following document was put in.]

Instructions, dated the 5th of October 1795, signed by three lords of the Treasury, to the defendant for the execution of his offices of commissary general of stores and provisions, and superintendant and director of forage, provisions, &c. of the army.

Mr. Dallas.—I do not know what authority there is for this.

Mr. Attorney General.—The commission to the lords of the Treasury authorizes them, or any three of them, to do an act; that which has been done, purporting to be by the authority of the lords of the Treasury, has always been received as evidence. Besides which, I do not care a farthing whether they have authority or not, for it comes out of the hand of the defendant himself, and he received this from persons who purport to be lords of the Treasury; and that carries the proof far enough.

Lord Ellenborough.—I want to know how the objection shapes itself. Is it to the authenticity of the paper, or to the effect of it?

Mr. Dallas.—The question is, what authority the commissioners of the Treasury have to give directions in a military matter.

Mr. Garrow.—His majesty's appointment.

Lord *Ellenborough*.—By whatever department of government he is appointed, he is instructed to obey the directions and instructions of the Treasury.

Mr. *Dallas*.—I am satisfied. It was our duty to make the objection.

Lord *Ellenborough*.—Certainly you are to watch the proof.

[The Instructions were read.]

The Right hon. *George Rose*, sworn.—  
Examined by Mr. *Garrow*.

Have the goodness to look at that book, and see whether you directed a letter, of which that is the copy, to be sent to Mr. Valentine Jones?—I have no doubt of it.

After that letter had been directed to be sent to Mr. Jones, and before he proceeded to the West Indies, had you any personal communication with him?—I had.

State the substance of the communication you had with Mr. Jones?—At such a considerable distance of time, it will not be expected that I should recollect the particular words; but I did state to Mr. Jones, as I had occasion to do to other persons in his situation, that it was expected from him, in conformity with what was contained in the letter, that he would derive no advantage of any sort or kind beyond the pay stipulated in his two commissions and the usual allowances that were made to persons in his situation from the different departments, some official allowances known and fixed; it was also my constant habit in communicating with persons in his situation to state to them —

And therefore you conclude you stated to him?—Yes; that a considerable advance of pay was made to them beyond what had been given in former wars, in order to insure a punctual and faithful discharge of their duty. I think the War-office pay was double what it had been in former wars. I think thirty shillings had been the pay in the American war. It will be seen from the War-office that his official pay was 3*l.* a day. He had 2*l.* a day from the Treasury, and 3*l.* a day from the War-office, which was double (according to the best of my recollection) what it was in the American war; and by the War-office pay being doubled, his half-pay was doubled, for the half-pay is regulated by the pay he receives from the War-office. Instead therefore of receiving fifteen shillings a day half-pay, he was entitled to thirty shillings a day half-pay under the commission that has been read. This additional pay was stated to all the commissaries general that I had any intercourse with, in order to insure the strictest fidelity and punctuality on their part: the lords of the Treasury being aware of the importance of securing to the public the services of respectable men, in a part of the world where it had been found so difficult to check or correct abuses. I was in the habit also of stating —

And therefore do you conclude that you did to Mr. Jones?—I have no doubt I did, that as the reward was so considerably increased, any departure from the strict line of their duty would be the more inexcusable; and that if any delinquency should be found the utmost extent of punishment that the law would inflict would be sought for against them. I did endeavour to convey in the strongest language in which I could express myself that there should not be a particle of profit derived in any way or manner beyond the pay.

The Right Hon. *George Rose* cross-examined  
by Mr. *Dallas*.

I believe those arrangements took place in 1795?—At the end of the year 1795.

Mr. Jones had been for many years before that time in the West Indies?—He had.

I believe you know that he had filled different public situations?—He had.

Among others, in 1793 he became commissary of the accounts to the army under sir Charles Grey?—He did.

And the manner in which he had conducted himself in those different situations had recommended him to those situations of trust?—Certainly.

He was one of those whom you believed to be a man of merit, as you stated him as such, and therefore selected him for his past conduct?—Certainly.

I believe at this time the establishment in the West Indies in point of military force was greater than ever it had been before?—It was certainly very large.

The duties therefore of the office of commissary general and superintendent of stores were very various, complicated, and extensive. Do you know that before Mr. Jones went out, he wished to decline going out on account of ill health?—It may be so; but I have no recollection of the circumstance.

[Extract of Mr. Rose's letter to the defendant read.—*Vide* Mr. Attorney General's opening speech.]

Mr. *William Smith*, sworn.—Examined by  
Mr. *Garrow*.

You are a clerk I believe in the banking-house of Herries and company?—Yes.

Are you acquainted with the signature of Mr. Valentine Jones?—I am.

Do you believe that to be his signature?—I do.

[Letter to Michael Sutton, Esquire from Valentine Jones, dated the 12th of May, 1796, read.—*Vide* Mr. Attorney General's opening speech.]

Mr. *Garrow*.—Look at that letter (the letter from the defendant to Mr. Glassford): is that the hand-writing of the defendant?—It is.

Mr. *Garrow*.—We shall read it by and by. Look at that receipt, the 25th of February;

1800; is that Mr. Jones's hand-writing?—It is.

Mr. *Matthew Higgins*, sworn.—Examined by Mr. *Attorney General*.

In the year 1796 were you in the West Indies, carrying on the business of a merchant there?—I was.

Do you remember the time when brigadier general Knox had the command there?—I do.

Had you any contract with him for supplying such vessels as might be wanted on the part of government?—I had.

Did you know Mr. Hugh Rose?—I did.

Was he at that time in the West Indies?—He was.

What office did he fill there?—I understood that he was acting deputy-paymaster.

Do you remember when you first heard that Mr. Valentine Jones was coming out as commissary?—I do; it was in the year 1796.

Was that while your contract subsisted with brigadier general Knox for supplying the vessels?—It was.

Mr. *Park*.—If he was a contractor in hiring vessels that must be in writing.

Lord *Ellenborough*.—We are not now upon the terms of it. If we embark in any of the terms you shall have it, at present it is only a date and a period.

Mr. *Attorney General*.—You were, in fact, supplying vessels to brigadier general Knox?—I was.

In consequence of hearing that Mr. Valentine Jones was coming out as commissary general, did you suppose that your contract would be at an end on Mr. Jones's arrival?—I had reason to suppose so from what I had heard. I understood that it would be in the power of Mr. Jones to take the contract from me.

Mr. *Park*.—I submit that must depend upon the contract.

Lord *Ellenborough*.—It is not whether it would or not be taken from him, but whether he understood it would or not.

Mr. *Attorney General*.—Did you make any application to Mr. Rose?—I did; I told Mr. Rose.

Mr. *Dallas*.—What he told Mr. Rose I submit is not evidence.

Mr. *Attorney General*.—I mean to prove that in consequence of his making this application to Mr. Rose, a contract was entered into between Mr. Rose and Mr. Jones.

Lord *Ellenborough*.—If I send a message to a man, I can first show that I communicated that message to the messenger, and then the messenger can prove the delivery of it to the man to whom I sent it. That is all taken as inducement to something that will afterwards, it is presumed by the attorney-general's statement, be material.

Mr. *Attorney General*.—What did you desire Mr. Rose to do?—I told Mr. Rose that, as he was on terms of more intimacy with Mr. Jones than I was, I should be very much obliged to him if he would speak to Mr. Jones not to take the contract from me.

Mr. *Dallas*.—I am extremely sorry to object in this case, and I would not unless I felt it was my duty to do so. I cannot see upon what principle all this conversation between Mr. Higgins and Mr. Rose can be evidence against Mr. Jones. I perfectly understand the opening of the attorney-general; that in consequence of conversation of some sort, an application was afterwards made by Mr. Higgins to Mr. Jones, and therefore no doubt with respect to the conversation that took place between Higgins and Jones, that is evidence; but it will not follow that Higgins communicated to Jones the whole of the conversation between him and Rose.

Lord *Ellenborough*.—The uncommunicated part will have no influence. If I send a person a message, I prove the message I sent, then call the messenger to state what he communicated. But can you stop it in *limine*, or will you say, that that part which is communicated is evidence, and the rest is not?

Mr. *Dallas*.—They may go to the conversation with Mr. Jones at once.

Lord *Ellenborough*.—This witness, I suppose, afterwards had some communication with Mr. Jones, and then it will appear whether this message was communicated.

Mr. *Attorney General*.—He acts upon it. It would be a receipt for inverting the order of proof in all cases. It is the constant course of business, that we go through this which is not evidence in itself, but upon the faith that it will be brought home.

Lord *Ellenborough*.—Yes, that it fixes upon Jones the knowledge of what he communicated.

Mr. *Attorney General*.—You applied to Mr. Rose, whom you supposed better acquainted with Mr. Jones than you were, desiring him to make application to Mr. Jones that the contract might not be taken from you?—Yes.

In consequence of that, did you afterwards see Mr. Rose, and then Mr. Jones?—I saw Mr. Rose a considerable time afterwards. I went upon an expedition to Demerara that very day; this was at Barbadoes; Mr. Jones had not arrived at the time. I went to Demerara upon the expedition, and returned to St. Lucie.

When you got to St. Lucie were Mr. Jones and Mr. Rose there?—They were.

Did you see Mr. Rose, and afterwards Mr. Jones?—I did.

Did you, from any communication you afterwards had with Mr. Jones, learn from him that he had made any communication to Mr.

Rose?—Not from Mr. Jones. I afterwards repeated to Mr. Jones a conversation that had passed between Mr. Rose and me.

Was that the conversation that you had with Mr. Rose after your return to St. Lucie, and before you saw Mr. Jones?—It was.

What was that conversation?—Mr. Rose told me that he had arranged the business with Mr. Jones, or settled it for me; that I was to continue to have the contract. I told him I was very much obliged to him. He replied to me, and said, that he was obliged to make terms with Mr. Jones. I asked him what terms. He said that Mr. Jones must have a moiety of the emoluments arising from the contract, and the other moiety was to be divided between him (Mr. Rose) and myself. I told him I would have nothing to do with it, or that I would not agree with it. Mr. Rose said, I was very wrong; that I should think of it; that there were many people who were very ready to take it, and willing. Mr. Rose said, that the vessels might be discharged, for Mr. Jones had commenced purchasing vessels; that the intention, he thought, was, to buy vessels for government, and to navigate them, and let them be the property of government. I told him, I thought he would find that impossible.

You need not give the particulars of that conversation.—Mr. Rose used farther arguments, and said that sooner than I should not go on with the contract, I might keep his part of it, and retain the moiety to myself. I then told him that I should go on with it, but I would not accept his part of it.

That is, that you would give him his quarter of the profits?—Yes; and he, after that, stated to me, that for the loss I should sustain in giving up so much of the contract, that it would be made up to me in the supplies; that whatever supplies were wanting for the use of government, that I would be applied to for furnishing them. It was mentioned that the profit arising from the supplies was to be divided in the same manner with the profits arising out of the vessel contract.

This conversation passed on ship-board, I believe?—It did.

Did you afterwards see Mr. Jones?—Mr. Rose told me Mr. Jones was in the cabin, and desired me to go down to him, which I did. The conversation with Mr. Rose was upon the quarter-deck of the vessel. I went down to Mr. Jones, and I repeated the conversation that had passed between Mr. Rose and myself, as far as regarded the terms of the agreement, and my acquiescence.

Did or did not Mr. Jones assent to it?—He assented to it. Mr. Jones assented, as far as my memory goes, by an inclination of his head, rather than by any expression:

You stated to him the terms?—I did.

Lord *Ellenborough*.—Did you state them distinctly and audibly?—I did.

Mr. *Attorney General*.—After this time, did

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you go on with the vessel contract, and were you employed to supply the government with what was wanted for the use of the stores?—I did; I went on with the vessel contract, and the supply of stores to a very considerable extent, for nine or ten months.

Can you state what your charges on those two accounts amounted to in foreign currency?—I cannot tell without seeing the books.

Look at this book.—

Mr. *Dallas*.—Is that book your hand-writing?—It is not.

Mr. *Attorney General*.—Was this book kept with your knowledge?—It was; but with respect to accounts, Mr. Winter, who is here, can explain every part of it.

But did you ultimately settle your accounts with Mr. Jones upon the footing of that book?—I did.

I see there is, in the first page of that book, your general account with the commissary-general?—There is.

Mr. *Dallas*.—He says he did not keep it.

Lord *Ellenborough*.—Was that book produced at any meeting of Jones and you at settling accounts?—I do not think it was.

Mr. *Attorney General*.—I am asking him only to explain to us the nature of that book which he kept.

Lord *Ellenborough*.—This book may have different applications in evidence. Unless he had some communication with Jones about it, perhaps it may not be evidence upon that account; the question may be, whether he acted upon those books; a man may ask, is that your pocket-book? He says, "this book," which was shown him, "was kept with my knowledge, but Mr. Winter will explain the items of it; but I settled my account with Jones upon the footing of this book; I do not think this book was produced at any meeting between Jones and me."

Witness.—It is not in my power to swear to any thing in this book, because I left it entirely to Winter, the clerk, and his brother.

Lord *Ellenborough*.—Then for the veracity of the entries you refer yourself to Winter?—Yes, to Winter entirely.

Mr. *Attorney General*.—Is that entry, be it what it may, true or false? You will see there is credit given for 153,273*l.* 17*s.* 10*d.*; was that entry made in that book whilst it remained in the West Indies?—It was.

You saw it there in the West Indies?—I did.

At what period did you see it in the West Indies?—It might probably be in the month of March or April, 1797.

Was the preceding entry, which is "discount to Rose 94,158*l.* 13*s.*", there at the same time?—It was.

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Turn to page 44, there is a title "profit and loss?"—There is.

Were those entries made while the books were in the West Indies?—They were.

There is an account with Hugh Rose, page 16?—There is.

Mr. Dallas.—I really must object to reading all that is in this book; it is a book not kept by the witness.

Mr. Attorney General.—I am proving that these entries were made in the book while it was in the West Indies, in order that it may not be suggested that they are fabricated since.

Lord Ellenborough.—Can there be any objection to asking a witness, did you see such a thing in these books at such a time? you could not put three questions if these sort of objections were made. Is that your pocket-book? Yes, it is. What is that to me whether it is his pocket-book? The relevancy is not upon the first question, but upon the connection of the first with the second, and that with the third which connects the whole.

Mr. Dallas.—I have no objection to his stating that he saw the whole of that book in the West Indies.

Lord Ellenborough.—The present inquiry is merely whether he saw this book in the West Indies, with those entries in it.

Mr. Dallas.—I do not object to that.

Lord Ellenborough.—I will be as watchful as I can that no improper question shall be asked; but if these objections prevail I should be trying my first cause.

Mr. Dallas.—I stated it from the suggestion of my friends around me.

Lord Ellenborough.—If you think the objection is maintainable let it be argued. What is the objection to asking the witness whether he saw in the West Indies in March or April, 1797, a book containing those particular entries to which he has referred?

Mr. Dallas.—In that way the entries are made evidence.

Lord Ellenborough.—They are by no means made evidence. You cannot measure your course at once, but must go by steps. It is a step in the evidence they offer, that these entries were existing at a particular period; if a clear argument, I do not say a solid argument, but if a clear argument, can be offered to show that this is not admissible, let me hear it.

Mr. Attorney General.—When did you leave the West Indies?—In May, 1797.

You have no doubt you saw that book in the West Indies?—I have no doubt I did, at the latter end of April or the beginning of May, 1797.

Did you at any time come to a settlement

of accounts with Mr. Jones?—There was a settlement of accounts with Mr. Jones a little before I left the West Indies: from this book it must have been on the 31st of March.

Was the account settled upon the footing of that book?—It was, if you mean the profit and loss account?

I do.—Yes, it was.

Had he credit for his share of the profit and loss according to the agreement that you stated to have been entered into?

Lord Ellenborough.—The question is, with whom that settlement was.

Mr. Attorney General.—Did you personally see Mr. Jones?—I did see him.

When you saw him, did you come to any settlement with him of those accounts?—I stated to Mr. Jones what the amount of the profit and loss was.

Did you state to him the amount as it appears in that book?—I did.

What was it?—153,273*l.* 17*s.* 10*d.* currency or about 87,000*l.* sterling.

Was that the whole profit, or his moiety of it?—That was the whole profit that was due to him.

Then that was the half of the whole profit, was it not?—It was; there was a subsequent account; that was what was due by these books.

You stated it to him then, and settled it with him?—I did.

Personally? you were with him?—I cannot take upon me to say; there is an order given here for 94,000*l.*, and whether I received that order or Mr. Winter, I cannot say. When I came to this settlement, as here stated, he owed me 94,168*l.* 13*s.* currency more than his share of the profits came to.

He admitted that he owed you that, after taking credit for his moiety of the profits?—It was so, it appears from this book. I could not swear to it, but from what appears here.

Lord Ellenborough.—Independently of that book, do you recollect his stating that he owed you 94,000*l.*?—I do not recollect his stating it, but I stated it to him and he admitted it.

Mr. Attorney General.—I do not want to know whether the entries which constitute that account in that book are true or not, within your own knowledge, but whether you settled with Jones upon the footing of that book?—I did.

Had Mr. Jones, or not, credit for that sum as the moiety of his profits?—Mr. Jones, in finally settling with me, paid that sum short; he retained that sum in his hands, namely 153,000*l.* currency.

You stated that there were some parts of the transaction that were not comprised in this large settlement?—I did.

Had you any thing that went under the name of the American adventure?—I had.

Did that grow out of those concerns that

you had with government?—I rather apprehend it did. I had always been in the habit of considering it as a private adventure, and thought I had no right to render any account of it to Mr. Jones; that it was not within my agreement.

What led you to render any account of this to Mr. Jones?—At first, I thought it a private adventure; afterwards, on considering it, I thought that the agreement was too large; I considered it as optional with me, whether I rendered this account or not, for Mr. Jones never said a word to me upon it.

Did you in fact make him this allowance?—I did.

Did you direct any one acting under you, to make up an account of that American adventure?—I requested Mr. Nathaniel Winter to make up an account of that adventure.

Now, without asking you whether the account made up by Nathaniel Winter was correct or not, did you afterwards, upon the footing of that account, pay any sum to Jones? or did Nathaniel Winter by your order pay any sum to Mr. Jones?—He did; he paid a sum of 800*l.* and odd to him, but I am not very certain as to the sum.

Was that sum paid by you on account of the profits of the American adventure, including in it some other articles, perhaps, relating to the contracts?—I do not think it included any thing relating to the contracts. I think it was a balance due upon the American adventure, which I had always considered as a private adventure; he never agreed with me directly or indirectly about it.

I have only one more question to ask you: had Mr. Jones any claim whatever upon you, except under that agreement which you stated to have been entered into between you and him on board the ship?—None in the world.

Was there any ground either for the allowance of 153,000*l.* odd, currency, or for the payment of 800*l.* odd, sterling, except that agreement?—None, whatever.

Mr. Matthew Higgins cross-examined by  
Mr. Dallas.

Mr. Higgins, you had been for some years a merchant in the West Indies, before Mr. Jones arrived there as commissary-general?—I had.

In what island was your house of business?—At Demerara.

What was the firm of your house?—I established the house there under the firm of Mackalmut and Co.

Who were the partners in that house?—Mackalmut and myself.

You have told us, that before you had any meeting with Mr. Jones, before his appointment as commissary-general, you had a contract for supplying vessels, under general Knox?—I had.

Was any person concerned with you in the profits of that contract?—Mr. Rose was; he had a moiety of it.

Do you mean Mr. Rose who was in the situation, as you understood, of deputy-paymaster-general?—I do.

Had you any acquaintance with Mr. Jones before you saw him on board this ship?—I had.

But you conceived Mr. Rose to be more intimate with him than yourself?—I did.

In consequence of that, you had a conversation with Mr. Rose before Mr. Jones's arrival in the West Indies?—I had.

And then, I understand, the intended application to be made to Mr. Jones, arose on your part in an application to Mr. Rose?—It did, the proposition on my part not to take away the contract from me.

You have already stated that in that contract which was carried on under general Knox, Mr. Rose had one half of the profits; had any other person any allowance out of this contract?—After I had made the contract with general Knox, Mr. Rose asked me if general Knox derived any profit from that contract.

Was any person present at the conversation between Mr. Rose and you, in the first instance, except Mr. Rose?—No, not that I recollect.

Was any person present at the conversation in the cabin, of which you have spoken, between you and Mr. Jones, but Mr. Jones?—I think not.

You have told us that, besides having the contract for vessels continued, you were also to furnish the supplies?—I was.

What supplies do you mean?—There were supplies of every description; beef, pork, rum, flour, biscuit, and a vast number of things.

And were you the person by whom, generally speaking, the purchases of those different articles were made for the supply of public services?—I think so.

The bills of parcels were delivered in by you, I believe, to Mr. Jones?—In general they were.

Did you deliver in those bills of parcels in the name of the real seller or in fictitious names?—Very often in the name of the seller and very often otherwise.

Were not some of the names upon those bills of parcels, purporting to be the sellers names, the names of persons who were not the sellers?—Certainly.

The market price, I believe, was to be certified by those on the spot, having knowledge of it?—That was understood to be a thing necessary to be done.

Now, was the price so certified in those different bills of parcels, or were there fictitious bills of price?—They were by real persons, I never knew an instance of any fictitious person. I do not understand the question.

Did you ever apply, in any instance, to any person, to certify that the price was the market price of the day?—I do not recollect ever making such an application, but Mr. Winter, the clerk, made the applications.

Was that application made by your desire?—In some instances I think it must; but in general he got people to certify himself.

I think you have told me that those books were not produced upon any occasion to Mr. Jones?—It is not upon my recollection that they were. I think, but I cannot be positive, but it strikes me, that Mr. Jones did come into the office one day and look at the profit and loss account or some account; but I do not think Mr. Jones ever came there for the purpose of examining the books. I think he once came and looked at the accounts. I should be inclined to say it was at his account as commissary-general; it strikes me he did see them once, I fancy it arose from my having made an application for money, and he wished to see how his account as commissary-general stood.

Of course there was a constant running account between you and him as commissary-general?—There was.

He was debited by you for the supplies, and you were credited for the payments?—Yes.

There was, therefore, a constant running account between you and him?—Yes.

Look at that paper; is that your hand writing?—I think it is.

I think you told us that when you went down to the cabin in which Jones was, nobody being with him, that he was in bed?—I did not say so. I found him writing when I went down.

He said nothing, I think you said; but nodded his head?—I do not recollect any expression. There was some conversation. I spoke entirely to the agreement; upon my mentioning the subject, as far as my memory goes, Mr. Jones made no reply but rather seemed to nod his head.

At what time did you leave the West-Indies?—In May, 1797.

Do you mean to state that there was a settlement of accounts between Mr. Jones and you previous to that time?—I do; the settlement that is here stated in this book.

Before you left the West Indies, was there, during any meeting between you and Jones, a settlement of any account between you and him, you and Mr. Jones being together?—I took with me, as far as my recollection serves, a statement of the profit and loss in my pocket; and showed it to Mr. Jones.

Do you mean to state that positively?—It is impossible to state that positively at this distance of time; I speak as far as my recollection goes.

This was a settlement of accounts up to that time, before you left the West Indies was it?—It was.

Was any body present but Mr. Jones at this settlement?—I could not call that a settlement, it was an explanation rather.

At what period are you speaking of?—It might probably be ten or twelve days before the settlement took place.

Do you call that the period of explanation

or of settlement?—The period of explanation upon which a settlement afterwards took place.

I believe you had no interview with Mr. Jones after he came to this country?—I have seen Mr. Jones, but have had no connection with Mr. Jones these eight or nine years.

Not upon subjects of business?—No.

Mr. Matthew Higgins, re-examined by  
Mr. Attorney General.

You were asked by my learned friend, whether there was not a constant running account between you and Mr. Jones, in which he was debited for the supplies and credited with the payments; and you stated that there was: is that account which now lies before you the account which my learned friend has been asking you about?—That is the account I allude to; and this is the account Mr. Jones wanted to see.

But that is the account which subsisted between you?—It is.

This is the general account, page 1. I see by that, Jones is made debtor to you in 247,442*l.* 10*s.* 10*d.*, you see that?—I do.

I see a part of that is struck off by an allowance of 153,273*l.* 17*s.* 10*d.* signed Matthew Higgins?—It is, being so much short paid me by Mr. Jones.

That is the half profits?—It is.

If you had had no agreement with Mr. Jones, should you have had to receive from Mr. Jones 153,273*l.* 17*s.* 10*d.* more than you actually had to receive?—I should certainly have had that 153,273*l.* 17*s.* 10*d.*, if I had not been bound by promise; if I had demanded it of Mr. Jones, he must have paid it to me.

If you had not been obliged to pay him half the profits you would have been entitled to receive that sum more than you have received?—I should, if he had paid me the amount of the commissary-general's account. I should have had to receive 153,273*l.* 17*s.* 10*d.* more than I ever did receive.

And that sum was allowed him, on account of the half profits?—That sum he retained in his hands on that account.

And you received so much the less?—And I received so much the less.

Lord Ellenborough.—When you settled this account with him ultimately, did you settle it on the footing of the agreement that had been entered into in the cabin?—Certainly, on the agreement that had been entered into with Mr. Rose.

And ultimately settled with him in the cabin, in the manner you state?—Yes.

Have you any doubt whatever, that you, in stating what had passed between Rose and you, stated it so that it must have been completely intelligible?—I think it was intelligible.

Had you any doubt, from that time till the time of settling the account, that both you and he were proceeding upon the footing of that

agreement?—There was nothing on his part, because he never said any thing about it.

And at last you settled it upon the footing of that agreement?—I did.

Mr. Nathaniel Winter, sworn.—Examined by Mr. Attorney General.

You were in the West Indies, I believe, at the time Mr. Matthew Higgins, Mr. Hugh Rose, and Mr. Jones were there; were you not?—I was.

Were you there at the time that Mr. Higgins had his contract for furnishing vessels?—I was there, when he had that contract.

Look at that book: you did not keep that book, I understand?—No; it is no writing of mine.

Did you see it from time to time?—Yes, I did.

You were in a house consisting of yourself, Tully Higgins, and Mr. Rose, who was a brother of Hugh Rose?—Exactly so.

Where were they carrying on business?—At St. Pierre's, Martinique.

Do you remember Mr. Jones calling on you at any time, to make any enquiry concerning Matthew Higgins's profits on the commercial account?—Mr. Higgins requested I would look at these books, and see what his profits were.

Had you, by desire of Mr. Higgins, informed yourself upon those books what his profits were?—I had.

Do you remember, after that, Mr. Jones at any time calling upon you?—I do.

Was this in 1797, just before Mr. Higgins came to this country?—I think it was.

When he came, what did he ask you for?—I gave him, by desire of Mr. Higgins, a statement of the profits from that book. It was made out, Mr. Higgins desired me to look at it, and, if Mr. Jones called, to give him an account of it.

Did Mr. Jones afterwards call?—He did.

Did you give him an account of what the profits were?—I did.

Was that in writing, or by word of mouth?—I think it was a statement of the profits in the different accounts in the book.

Mr. Attorney General.—We have given you notice to produce these.

Mr. Park.—We admit the notice to produce these, but we have no such papers.

Mr. Winter.—I do not know whether Mr. Jones took it away with him or not, but I produced it.

Mr. Attorney General.—Did you state to him what the amount of the profit and loss was?—I showed it to him.

And he saw it?—He saw it of course.

For what purpose he wanted it you do not know?—I do not.

What was the amount?

Mr. Mavryat.—He does not state that he

delivered it to the defendant; therefore, if it remained in the witness's possession he might produce it to show what it was.

Lord Ellenborough.—He made an extract from his book which he gave him; he says, "I do not know whether he took it away or not."

Mr. Attorney General.—If that paper remained with you is it lost? Is it with that book or any where where you should be likely to keep it?—No.

Lord Ellenborough.—Have you made such a search amongst your books lately, as that you might have found it if it had been there?—I think I should.

Mr. Attorney General.—You had an account made out upon a piece of paper of the profit and loss?—I had.

You produced it to Mr. Jones, he saw it; but whether he took it away, or left it with you, you cannot tell?—I do not exactly recollect.

But if it was left with you, you do not know what is become of it?—I do not.

Mr. Dallas.—We think that under these circumstances they should produce the paper.

Lord Ellenborough.—You describe it as a paper you made out from that book, for the purpose of delivering it to him: whether it is with him or not you cannot say?—I cannot.

But that it was with him, and he might have taken it, and you have no memory that he did not take it?—I have not.

Lord Ellenborough.—And it was made out for his use?—Yes.

Lord Ellenborough.—Then I should presume he took it away. We had a similar point upon a writ of error from the Common Pleas.

Mr. Attorney General.—What was the amount that was stated to him?—It was taken from the profit and loss account in this book.

Lord Ellenborough.—You have not seen the paper since?—I have not.

Lord Ellenborough.—And if it had been kept by you, you think you might have seen it since?—I think I should.

Lord Ellenborough.—As it was not a paper made for Mr. Higgins's use, but for Mr. Jones's, it would either be with you or Mr. Jones?—Yes, it was a copy of this profit and loss account.

Mr. Attorney General.—And the result of that is, that the profit and loss account would be 296,547l. 15s. 8d., the moiety of which would be 148,273l. 17s. 10d. currency. When did you come to this country?—In August, 1797; in May, 1797, I left the West Indies.

Do you remember, while Mr. Higgins was in this country, in 1800, being employed by him to make up the remnant of this account,



arising out of the American adventure?—I remember making out the account of the American adventure by Mr. Higgins's desire.

Was that with a view of ascertaining what the profit upon it was?—Certainly.

Did you make it out accordingly?—I made it out by the papers that were produced to me.

According to the papers that were produced to you, supposing Mr. Jones to be entitled to a moiety of the profits, what would that moiety amount to?

Mr. Park.—Should not we see those papers?

Lord Ellenborough.—If it is material to the question, whether the amount be justly or unjustly calculated, it is most material that you should have the papers; but if the precise amount is wholly immaterial, it is merely that he adjusted with reference to such an head of account; if there is any argument founded upon them with reference to the correctness of the account, every one of them must be produced.

Mr. Attorney-General.—I am willing to take them all right—all wrong, or part right and part wrong, just as they please.

Lord Ellenborough.—It is only a winding up of the account between the parties; he supposed he made it up correctly?—I do.

Mr. Attorney-General.—Supposing Mr. Jones was entitled to a moiety of the profits, how much in sterling money would be due to him?

Mr. Dallas.—The indictment states only the receipt of a certain sum in currency, which, at a certain rate of exchange, amounts to so much sterling; they are about to give evidence of the receipt of the different sums of money by a payment in London.

Mr. Attorney-General.—The gist and the gravamen of my charge against Mr. Jones is, that he colluded with Higgins and went shares with him in the profit. What he afterwards actually received is only aggravation; the precise sum is wholly immaterial; it is stated in the indictment under a *videlicet*, that in pursuance of the said corrupt agreement he received a large sum of money, to wit, so and so. In the next place, supposing that which is a decisive answer to my friend's objection, not to be so decisive; there are other counts in the indictment which do not state any sum whatever to have been received. My friend will ask me how can I proceed to prove that sums were received upon counts, which do not state that any thing was received? I prove it for this purpose; these counts do state that there was a corrupt agreement entered into, that he should receive a moiety, and I give the evidence that he did receive the moiety for the purpose of confirming that evidence which I have before given that he should receive the

moiety. Upon either of these grounds I submit that this is admissible evidence. The objection of my friend is, that though this goes to show a receipt of the moiety of the profits, it does not constitute a part of the sum precisely stated 153,273*l.* 17*s.* 10*d.*, and the answer is, that sum is stated under a *videlicet*, and therefore immaterial; and I might give in evidence any other sums; but even if that were not so, I give it in evidence under those counts that do not state the receipt of any money at all.

Mr. Dallas.—I do not conceive that my objection is removed by the answer given to it. I agree with Mr. Attorney-General that the sum stated in these different counts is under the *videlicet*, and I do not mean to contend that he is tied down to the proof of the receipt by the defendant of any such sum, for it would be enough to sustain either of these counts to prove that he received and kept a sum of money, and the amount of it would be immaterial.

Mr. Attorney-General.—I ought to set myself right in one particular. I have stated, and it had been so stated to me, that there were counts in the indictment which do not state any sum to be received. It is true, there is a count which does not state a sum to be received. It states a sum demanded, but still they are all under a *videlicet*.

Lord Ellenborough.—Having given evidence to satisfy the sum of 153,000*l.* and a fraction, you cannot afterwards go on and enhance that, and make that allegation of 153,000*l.* extend beyond its amount; and therefore I could not let it in, I think, upon that.

Mr. Dallas.—I was about to state, in addition to what I have already said, that all the counts state a corrupt agreement, and the charge is the receipt of a certain sum under the agreement. It is perfectly clear, from all the evidence that has been given, that the transaction of the American adventure, has no reference to the corrupt agreement; because upon the testimony, we have heard from Higgins himself, he states that that was a payment entirely optional upon his part; and that he considered it as a private agreement; meaning thereby, something distinct from the agreement which forms the subject matter of this count. Therefore, it having been stated by the witness, that whether he paid it or not was a matter of option, of course it does not form any part of that which is charged as a corrupt agreement upon either of these counts, and, therefore, upon that ground, in addition to the other, I submit to your lordship that this evidence ought not to be received. The agreement applies merely to supplying vessels and stores.

Mr. Attorney-General.—I will state correctly what the agreement was, as stated by the witness. What is proved is this, that he was to divide the profits.

Lord *Ellenborough*.—That Mr. Jones was to have a moiety of the emoluments arising from that contract. "I repeated the conversation;" then he states what the conversation was.

Mr. *Attorney General*.—Your lordship will find it was held out as an inducement to comply with the terms; that he was also to have the supply of the troops with provisions; that that supply of the troops with provisions was to be subject to the same terms; that Mr. Jones was to have a half, and Hugh Rose a fourth.

Lord *Ellenborough*.—"He said that for the loss I should sustain in giving up so much of the contract, it would be made up in the supplies; and that whatever supplies should be wanted for the use of the army, I should be applied to to furnish them; this was on board the ship." Whether this includes the matter that arose out of the bills—

Mr. *Attorney General*.—Your lordship will find afterwards the profits arising from the supplies were to be divided in the same manner.

Lord *Ellenborough*.—There is nothing which goes beyond the supplies of the contract for the vessels.

Mr. *Attorney General*.—Certainly. This was flour brought from America to supply the army with.

Lord *Ellenborough*.—We have not had detailed by him what the American adventure was. I do not find that he particularizes what it was.

Mr. *Topping*.—Higgins said it was perfectly optional; and Mr. Jones never spoke to him directly or indirectly upon the subject.

Lord *Ellenborough*.—It seems, by his evidence, as if it was paid by him under an idea that he might in fairness have resisted it; but still with reference to this agreement, it was the only foundation between them. I have great doubts in saying that this should not be received. I should like to see the other counts.

Mr. *Attorney General*.—I stated by mistake that there were some counts which did not state any receipt, or demand of money; all the counts do state either a receipt or demand of money, and they all state a large sum of money, 153,000*l*.

Lord *Ellenborough*.—But you may, under 153,000*l*., go for a less sum. You cannot use the same count upon which you recover, supposing that it were an action for 153,000*l*., and likewise add to it a farther sum; but you may, under the allegation of 153,000*l*., give evidence of that transaction, and you might, under the same allegation of 153,000*l*., give evidence of another sum.

Mr. *Murray*.—I submit that would be making two offences under the same indictment. I submit a man cannot be indicted for two highway robberies, or two misdemeanors, under the same indictment.

Lord *Ellenborough*.—In cases of felony certainly not. But there is no pretence for that in misdemeanors. It never was, since Westminster-hall has been built. I suppose an objection that there were two misdemeanors contained in one indictment.

Mr. *Garrow*.—In capital cases the judge frequently says, select one of your felonies.

Lord *Ellenborough*.—You may make it evidence by showing that this connects itself with supplies; but at present it does not touch it.

Mr. *Richardson*.—There are other counts, which state that it arose from supplies as well as other mercantile transactions.

Mr. *Attorney General*.—Were any stores received from America under this American adventure?—When the provisions were received from America, they were entered in this book.

I ask whether the subject of the adventure was flour, and other things, coming from America, and afterwards supplied by Higgins to the troops?—Flour was a part of the articles.

Were there any other articles than flour?—Flour, beef, and pork were a part of the articles. I suppose that provisions came from America, and were delivered to Mr. Higgins.

Lord *Ellenborough*.—Were they delivered to him, and by him applied in the execution of his contract with the commissary?—I suppose so.

Mr. *Attorney General*.—Had he any other use to make of them than that?—I believe not.

And you were a good deal acquainted with his concerns?—I was.

Lord *Ellenborough*.—Was he a dealer in flour, beef, or pork for any other purpose than supplying his majesty's troops?—I believe he was not.

Mr. *Attorney General*.—Did you make out the balance upon that account to be the sum that you afterwards paid to Mr. Jones's banker?—The profits of that American adventure, from which were deducted several items that were omitted in these books, leaving a certain balance; and upon that there was a half of it, so much sterling money, that was to be paid by me, by order of Mr. Higgins, to Mr. Jones; it was all done under Mr. Higgins's direction.

Was that the receipt you obtained from the banker upon making that payment?—I paid the money into the bankers, and got up this receipt.

Lord Ellenborough.—I think we have it in proof that it was signed by the defendant.

Mr. Attorney General.—Yes.

Mr. Nathaniel Winter cross-examined by Mr. Park.

Of course, when you were paying that money into the bankers, you must have been in London. Did you ever see Mr. Jones upon the subject of that receipt?—I did not.

Did you ever see Mr. Jones?—I did not.

Mr. Jones was resident a considerable distance from London?—I believe he was resident at Bath.

Did you ever see him upon the subject of the account to which that receipt relates?—No, I did not.

The books that are now lying before you are not of your hand-writing?—They are not.

You were not a clerk of Mr. Higgins in the West Indies?—I was not.

Who was his clerk at the time those books appear to have been made?—William Winter, a brother of mine.

Were you resident in the same island with Mr. Higgins?—I was.

But you were a merchant?—I was.

Mr. Higgins was a general merchant in your house?—No, he was not; Tully Higgins was.

You purchased goods, however, in your house, to supply these contracts, did not you, which you supplied to Matthew Higgins?—Yes.

Of course you had a profit upon that?—We had a commission.

Did you not often insert in the accounts which were to be rendered to Mr. Jones false names, as persons selling you goods?—Not I.

And I dare say you knew nothing of it?—I knew there were accounts rendered of supplies from Mr. Higgins not in his name.

And its false names; you knew the fact?—I knew the fact.

That the accounts rendered from your house?—Not from my house, from Mr. Matthew Higgins.

Did you not apply to persons to put false names in the accounts which Mr. Matthew Higgins was to render to Mr. Jones?—Yes, I have applied to them.

And those false names were put into the accounts?—They were, at Mr. Higgins's request, for articles he had supplied; he requested they might be made out in some other names.

Those other persons not being the sellers of the goods?—Yes.

You told his lordship, some time ago, that by desire of Mr. Higgins, when Mr. Jones called upon you one day, you delivered him a statement of the profit and loss account?—Yes.

Was Mr. Higgins present at that time?—He was not.

Was there any other person present but yourself and Mr. Jones?—No other.

Whom are you living with now?—I am living in Fixxroy-street.

Do you reside at all with Mr. Higgins?—Mr. Higgins resides in Ireland, I believe.

Does Mr. Higgins now carry on any business?—Not that I know.

Are you his agent in England?—I do business for him.

You are his agent in England, his general residence being in Ireland?—Yes.

You spoke, a little while ago, about the American adventure: I ask you whether you do not know that that American adventure entirely consisted in a transaction respecting bills of exchange?—Bills of exchange formed one item of the debit side.

Do you, of your own knowledge, know any thing of the particular items that composed that American account?—Not of my own knowledge.

As you were not a clerk to Mr. Higgins in the West Indies, do you, of your own knowledge, know any thing of those accounts to which you have been referring, except as it has been told you by Mr. Higgins, or as you collected from that book?—My knowledge goes merely from the books.

The general memory you have about this supposed abstract of that account is, that it was left in your possession; you said you could not tell whether he took it away or not?—I cannot say positively.

You showed it him, probably, in the place where Mr. Matthew Higgins transacted his business, did you not?—I did not.

How came you in possession of Matthew Higgins's books?—At Mr. Higgins's particular request, he desired me to look at those books; they were kept by my brother, he desired me to look at this book, and see whether it was made out correctly from the books.

But you know nothing of the facts, except as you were told, or collected them from the books?—Certainly.

How long did you remain in the West Indies, after the time that you showed the account to Mr. Jones?—It could not be a couple of months, if so long, after that transaction.

Did you ever draw out any general accounts for the use of Mr. Jones from those books or statement of the accounts between him and Higgins?—I did, which account of course was rendered to Mr. Jones.

Will you take upon you to swear, of your own certain knowledge, that any account was made out from that book which Mr. Jones ever saw?—I certainly, to the best of my recollection, did render Mr. Jones an account from this very book up to the last March, in the West Indies.

Is it only from that book that you draw that conclusion? or will you take upon you to swear from your memory, that any such account was rendered?—To the best of my knowledge an account from this book was rendered to Mr. Jones.

Lord *Ellenborough*.—Have you any doubt about the fact?—I have not.

Mr. *Park*.—That is a Ledger as I understand?—It is.

What is become of the Journal?—That I know nothing about.

You never saw a Journal?—Yes, I did.

When did you last see it?—The last time I saw it, it was in possession of some of the auditors of accounts in England.

When did you last see that book lying before you, before you saw it now in Court?—I saw it a few days ago.

You left it, of course, in the West Indies I take for granted?—No, I believe Mr. Higgins brought it with him, I was not in possession of the book.

Then whatever books and papers which you had of that profit and loss account, you had delivered back to Mr. Higgins?—Yes, the very day I believe; that day or the next.

At the time when you say you showed the paper, and which you cannot recollect whether Mr. Jones took away or not; had you the journal with you then, as well as the ledger?—I had.

Did you deliver the journal as well as the ledger to Mr. Higgins?—I did.

You say that you cannot recollect whether you delivered the paper over into the possession of Mr. Jones or not. If it was left by Mr. Jones with you, of course you would deliver it back to Mr. Higgins with the books?—I do not know.

If Mr. Jones had left the paper in your custody, would you not have delivered that paper back when you were delivering back the journal and the ledger?—I think I should.

Can you now take upon yourself to say whether Mr. Jones did or did not take away the paper from you?—If I was obliged to say one way or the other, I should rather say that he took it.

Are you so assured of that fact that you will take upon yourself to swear aye or no, that he did?—I will not take upon me to say that. If it had been left with these books it is most likely I should see it afterwards; and I do not recollect seeing it afterwards.

Mr. *Nathaniel Winter*, re-examined by  
Mr. *Attorney General*.

You were asked whether, from your own knowledge, you could say, that this American adventure consisted in beef and pork, salt provisions, and flour that were sent from America to the West Indies. Now I do not ask you that question, but whether it appeared to be so from the books out of which you made out the account?—There was no book from which I made out that account.

But the papers?—The papers.

Then you made it out as consisting of those articles?

Mr. *Park*.—I object to this. The question here is most material, because, in order to bring the American adventure at all within the

purview of this indictment, it is necessary to show that it constituted a part of the original corrupt agreement respecting provisions. They can only fix that adventure upon this footing, namely, that it did consist of articles of provisions, the witness having said that he knew nothing whether it did consist of articles of provision, but from papers of which we have no possession, upon which we can form no judgment, nor your lordship nor the jury; he is to say, upon the recollection of some papers he had before seen, that it did consist of those articles. You drew that American account out in England from papers?—Yes.

Mr. *Attorney General*.—Was that account made out, be it right or wrong, upon the foundation of flour and other things sent from America to the West Indies?

Lord *Ellenborough*.—Did you know anything of the materials of which that account was formed, but from the written papers that were put into your hand?—Only from the written papers.

Mr. *Attorney General*.—Do you know of cargoes of flour and provisions coming from America, from time to time to Mr. Higgins?—I do.

Had Higgins a house in America?—He had not that I know of.

The house they came from was the house of Bennett and Carey, was it not?—It was.

Did provisions of this description come to a considerable amount from America to Higgins?—There did.

You told me before, that you knew of no use that he made of such articles except for the supply of the commissary?—I did; I beg pardon; I believe there was some of the American provisions sent after the supply to the commissariat was over.

Do you know that some were supplied to the commissariat?—I do.

Lord *Ellenborough*.—It is open to you to shew that there was some other supply. He has come back to what he said before. That is only a general answer that he knew nothing of the goods. It appears he had a general knowledge of the articles of provision which were furnished to the commissariat, and he knows of no other use to which they were applied. I am afraid I have given too much encouragement to this; there is a very proper anxiety to have every thing brought forward which can be of service, but there can be no doubt upon this.

Mr. *Park*.—Will your lordship put this question for me?

Mr. *Attorney General*.—I have not done yet. You have been asked whether your house of Winter and others were not accustomed to send in these provisions in false names, and whether, at Mr. Higgins's request, you did not apply to persons to put false names

to accounts which Mr. Higgins was to render to Mr. Jones, and you say you have?—Yes.

Was Mr. Higgins accustomed to render an account of provisions under names other than his own?—Yes he was.

Was he accustomed to render accounts of provisions to the commissary which he furnished himself, as if they had been furnished by others?—I think he did.

You say your house purchased a great number of provisions for Mr. Higgins?—Yes.

And Mr. Higgins rendered them again to the commissary?—Yes.

I take for granted your house, then: were you the brother of William Winter, who was Mr. Higgins's clerk?—Yes.

Mr. Rose was the brother of Hugh Rose?—Yes.

And Mr. Higgins was the brother of Tully Higgins?—Yes.

I take for granted you had some feeling in the business?—We drew a commission of five per cent upon the supplies for purchasing them.

You put on first a commission of five per cent on what you gave for them?—Yes.

How much did Mr. Higgins put on upon that afterwards?—That I do not know.

You had only five per cent?—No.

You would have been glad to have done that business for government yourself at five per cent, would not you?—That I do not know.

Would not you have done it for government as you would for any body else at five per cent?—I dare say I should.

Mr. Park.—Now my lord I will trouble you to put a question, whether he knows any thing, of his own personal knowledge, about these provisions coming from America, but as Matthew Higgins has told him.

Lord Ellenborough.—Do you know any thing of any provisions coming from America, but merely from what Matthew Higgins has told you?—Yes, I know the fact.

Mr. Park.—Or from seeing papers.

Lord Ellenborough.—He says he knew the fact. A man in the habit of seeing cargoes arrive, cannot fail to have known it. As you would have done the business at five per cent, all which is charged as profit, ultra that five per cent might have been saved to government, if you had been employed without the intervention of others?—I cannot say what I might have done.

Is there any thing odious in the money of government, that you would not have taken their money as soon as that of any other persons?—No, certainly not.

[The following receipt was read:]

"Received February 25th, 1800, of Matthew Higgins, Esquire, by the hands of Nathaniel Winter, Esquire, Eight hundred and twenty nine pounds, five shillings and eight pence, in full of accounts between said Matthew Higgins and  
£.829 5s. 8d. VALENTINE JONES."

Mr. Garraw.—We will now read the letter to Mr. Glassford that is mentioned in your lordship's paper, No. 6; it is proved by Mr. Smith.

[The letter was read as follows.]

"Bath, December 3rd, 1802.

"Dear Sir;—The commissioners having sailed three weeks since, will, of course, arrive long before this letter, although in a merchant ship; but unless their secretary, who went before, has applied to you on any matter concerning my accounts, I think you will have time enough to make out any thing that may be necessary before the commission proceeds upon much business. I do not, indeed, imagine, that any thing material can be expected of you, relative to my business of my cash expenditure, of which I made up all vouchers on my departure, now in their possession, but as the provision and store accounts came in a different degree under your inspection, you may be of service to them in clearing up any question of doubt or misconception. However, I should very much wish that in such cases you would be very circumspect, and not give any answer relating to me on my general business, without the requisite time for reflection, and recollection. As I am well assured of the subsequent concern it would give you, to be betrayed, by designing queries, into an hasty or incautious statement of any facts, which more deliberate information would put in a different view.

"As I have never known what entries you have made in any of your accounts sent home, for which credit was to pass to me on those matters which you settled after I left you, I could wish you to state them to the commissioners, such as the receipts of sales at St. Pierre. What Phillips was to account for from Barbadoes, some provisions at St. Kitt's, &c. &c. &c. and particularly the different parcels of rum which you got from Montserrat, Tobago, Fort Royal, &c. which it will be very material for me to get credit for, and it would be also doing me a service if you could ascertain the rum that was shipped with the Carriabs, for Ratan, and for which I have unfortunately no voucher.

"Had Thomas Smith been disposed, he might have accomplished it for me by obtaining the voucher from the agent of transports, but I cannot conceive how you omitted to obtain it originally.

"With respect to my provision accounts, generally, I have no doubt, but many questions will be put to you, but for heaven's sake don't be unmodelling them again, as they cost me more pains and trouble, than I ever had in any business in my life, and they would desire no better than to perplex me more. If you can make them better, or you can supply any deficiencies that I

may seem to have made, I shall be obliged, but do not make any observations on my general abstract, being of different form from any state of yours, nor would I wish it to be known that I had written to you about it, not that I should fear fair and candid investigation, and I trust you are, as well as myself, conscious that our proceedings had not the evil intention our judges believe, but I have already seen too much ill will on this side the water, not to suspect foul play on the other.

"On the whole you have one general answer in your power, which is that you cannot remember points of business so long gone by.

"The most extraordinary conduct I have met with, is on the part of your brother, whose answers to the different examinations he underwent, I have learnt with astonishment and disgust.—I hope you will forgive my expressing myself so strongly, but he has really exceeded the bounds of truth and common justice, to a man under whom he experienced no injuries himself, and whom he has manifestly wished to injure in order to comply with the designs of those who are making a tool and handle of him.

"If ever you get a sight of the answers you will acknowledge that D. G. has even gone beyond the matter on which he was interrogated, to convey insinuations of improper precedence with regard to rum supplied at St. Kitt's, trying to involve in censure and suspicion, not only me, but Somersall, Mc Lacklane, White, and others, too: probably also, what was intended to injure me, may ultimately tend to affect you, but he has not attended to any consequences even to himself.

"I shall consider it a favour if you will give me a line by every good opportunity, telling me what the commissioners are doing, and on what points of business they are engaged, with your own general observations, and opinions of the process which will be gratefully acknowledged by.

"Dear sir,

"Your very sincere and obedient servant,  
"VALENTINE JONES."

Mr. Attorney General.—That is my case my lord.

#### DEFENCE.

Mr. Dallas.—[afterwards Lord Chief Justice of the Common Pleas.] May it please your lordship; Gentlemen of the jury; The case upon the part of the crown has at last arrived at its conclusion, and it now becomes my duty to address you on behalf of the defendant. And for reasons that will presently appear, without any preliminary observation of any sort whatever, I shall proceed immediately to draw your attention to the question that you have to try; all the altercation that has taken place, which was more than one could have

wished, but which has been unavoidably necessary, has left this case perhaps at last involved in some degree of perplexity and confusion.

With a view, therefore, to your clearly understanding what is the case that you have to investigate, I shall begin by requesting your attention to the particular charge. The question which you have to try, is, simply and singly, this, whether or not the defendant, Mr. Jones, has been guilty of participation in profits, with Mr. Higgins, the witness, who has been this day produced on the part of the crown, in violation of the duties of his station, and in breach of the trust reposed in him. That is the only question you have to try: and I must take the liberty of reminding you that nothing turns upon the magnitude of the sum, for, supposing the fact to be established by proof; and when proved, to constitute in point of law an offence; whether the sum was large or small, makes no difference whatever in the essence of the crime. So that, after all, the single question for your enquiry will be, whether or not this participation of profits has taken place.

I stated that I would begin by reminding you of the real nature of the charge, without any preliminary observation: and I did it for this reason, because my learned friend the attorney-general, in the exercise of his justice and humanity, seeing the very singular predicament in which this unfortunate gentleman is now placed, felt it to be his duty, on the part of the crown, to caution you against acting under the influence of any prejudices which you might have imbibed from charges made elsewhere.

Whatever adverse changes and revolutions may have happened around us, at least, hitherto, the administration of public justice has here been preserved, pure and perfect; and every man in this country, from the highest to the lowest, under whatever circumstances of accusation he might have stood, had, at least, I will not say the chance, but in almost every instance the certainty, of a fair and impartial trial. The public feeling itself led to it; all the provisions of the law tended to secure it; and it was enough to say of any man that he was under accusation, to put him (if I may so express myself) for a time under public protection. I am not disposed, upon occasions of this sort, to complain upon slight grounds; for I hope there is no man who from principle is more a friend than I am to a fair and even free examination of the conduct of those who are placed in any public situation, of whatever description: it is the condition upon which they accept their trust: the public have an interest in every part of their conduct; and the public have unquestionably a right to examine what that conduct has been. But still, in point of justice and of humanity, this must have some reference to times and seasons; and to circulate upon the eve of a trial of this sort, upon which a most respectable individual

has at stake all which can be dear and valuable to him, and to his family in this world, charges of the description which the attorney-general has stated for the purpose of raising a degree of prejudice, which I do not remember to have been equalled in this country, when the party accused has no opportunity of rebutting such charges, is to poison the very source and fountain of public justice, and to destroy that security upon which we all depend for the protection of our property, our liberty, our lives and our honour.

I do not mean to complain of it, but I think it was but a faint and feeble caution, which my learned friend the attorney-general gave you upon this point. After what every one of you must have read in every public newspaper for some days past, circulating into every part of the kingdom, and falling into the hands of all — after the atrocious charges which have been made against this gentleman, in common with others, I should think myself guilty of a desertion of the duty I owe to him, and of a dereliction of that defence which in part he has committed to me, if I did not on his behalf assert, as I am instructed to do, that all the material charges which have been brought against his past conduct, are founded on the grossest misrepresentation, and in many instances on gross misconception. He trusts that the day will arrive when he shall be able, as to those charges, fully to justify his conduct to the public; at present I admit it is not competent to me to go into the detail of them, and therefore I stop here; but I state it for the purpose of earnestly requesting that you will dismiss from your consideration all that you may have heard, and all that you may have read, confining your attention to the single question, whether he has been guilty of a participation of profit with the witness who has this day been produced before you.

The charge against this gentleman is, a breach of public trust. I am sure you cannot have forgotten the account that has been given of him, by the very respectable witness who was called upon the part of the crown, in the beginning of this inquiry. By the evidence of Mr. Rose, you have been informed that Mr. Jones had, for a considerable number of years before his most unfortunate and unhappy connexion with the witness, Mr. Higgins, been placed in different situations of public trust in the West Indian Islands; in all of which, he had conducted himself with unblemished integrity and honour, and had distinguished himself by so faithful a discharge of all the duties incident to those different situations, that upon the ground of his personal merit only, tried and approved in a long course of public service, his appointment to the office of commissary-general took place. I cannot avoid pointing this out to your attention, with a considerable degree of feeling for the situation of this unfortunate gentleman; for, whatever may be the result of this day's inquiry, there is no man in this country deserving the

name of Briton, who would not deeply deplore, that a man, thus distinguished throughout his early life, should be devoted to ruin on the testimony of such a person as Mr. Higgins, speaking of him only according to the odious picture which he has given of himself in this court on the present occasion.

In the year 1795, Mr. Jones accepted of two appointments, those of commissary-general, and superintendant of the stores; you have also heard from Mr. Rose, that this was a period of time when our military establishments in the different West Indian Islands, were greater than they ever had been before; in fact, our troops amounted to no less a number than 30,000 men. The situation, therefore, in which this gentleman was placed, was one of most extensive public trust; it comprehended the supplies for the army of every possible description, and not merely upon a particular spot where he himself might be personally present, but he was, with a superintending eye, to provide for every department of the public service, in all the islands in the West Indies, which were subject to the dominion of the crown of Great Britain. And, by the instructions which have been produced and read on the part of the crown, it appears that it was part of his duty to go, from time to time, to the different islands, to ascertain in each, what supplies were wanted for the service of the public. The reason why I point out this fact for your observation is, that in the course of a service of such unexampled extent, it was utterly impossible that this gentleman could conduct the details of it, without the intervention of subordinate agents; it became, therefore, necessary, in a season of all others the most important, in a state of war, and while different expeditions were on foot, to commit the execution of the subordinate parts of the public service to those different agents whom he was under the necessity of employing; and of this description was the witness, Mr. Higgins, who has this day appeared before you.

With respect to Mr. Higgins, you find that, for some time before the appointment in question took place, he had carried on business as a merchant in the West Indies; and it is in evidence, that long before the appointment of Mr. Jones, he had entered into a contract with general Knox, who had the command in one of the West India Islands; and, that Mr. Jones found Mr. Higgins in the execution of this contract. I would just remind you as I proceed, that it is proved, on the part of the crown, by the testimony of the witness on whom they rely (what credit is due to his story will be matter of subsequent consideration), that this proposal, if it ever took place—a point I shall presently examine, did not originate in the mind of Mr. Jones; but you have it distinctly avowed, by Mr. Higgins himself, that the intention of applying to Mr. Jones to continue his contract, originated in the mind of himself, Mr. Higgins, before Mr. Jones had

arrived in the West Indies. Now, when I pointed out what had been the previous situation of Mr. Jones, and what his conduct in that situation, that it had been uniformly exemplary and honourable, and such as to draw upon him the approbation of his superiors, and lead to the appointment in question, it was not for the purpose of suggesting to you that a long course of honourable conduct could constitute an answer to the proof of criminality; but when this is a question of fact, depending upon the evidence of the witness produced this day on the part of the crown, and when you contrast his conduct, according to his own testimony, with that of Mr. Jones, I am perfectly certain, that if the question should at last hang in any degree of doubt, against the testimony of a witness, according to his own profession, up to the chin in guilt, you will believe, that it is not probable, that in a single moment a person, who during his past life, had conducted himself in the way Mr. Jones had, would enter into that corrupt agreement.

With respect to the charge itself, my friend did me no more than justice in supposing that I should not, for a single moment, contend, that if a man accepts a public situation, the nature of which is, that his conduct shall operate as a check upon others, it is not a breach of the duty incident to that situation, that he should participate in profits with those whom it is his duty to control. We do not, therefore, (although I am always extremely glad to hear the right hon. gentleman\*), want even from his high authority, that advice which was given to Mr. Jones on his entering into office; for the nature of the office would teach Mr. Jones, independent of the positive written instructions he received, but much more under those instructions, that he would misconduct himself by a participation of profits: and, I should be ashamed of myself, if I could follow any other course than that which my learned friend has pointed out for me, in admitting at once, that, if the facts which have been sworn to this day are to be taken as proved against Mr. Jones, they do undoubtedly amount to that offence which is charged upon the face of this indictment; that is, a violation of the duty incident to his situation by a participation of profits unjustly and unlawfully made. With respect, therefore, to the law of the case, I begin by distinctly stating, that there can be no disagreement between the attorney-general and myself. And having so stated the case, you will at once perceive, that this resolves itself into a mere question of fact; is, or is not, the charge made out upon the evidence you have this day heard?

His lordship will give me leave to draw his attention and yours, to the particular manner in which this charge is framed. It is not a charge against the defendant—after these West India concerns have been so long (in the language of the attorney-general) in every one's

mouth; after so many inquiries have taken place, first by the West India commissioners, and afterwards by the commissioners of military inquiry—of having delivered in a deficient quantity or of having made out a false voucher; for whatever may have been the conduct of others in that respect, they will stand distinguished from Mr. Jones; for, after all the inquiry which his conduct has undergone, after all the research to which it has been subjected by the keenest penetration on those successive inquiries, it ends in this, that he has entered into a participation of profits with a person who has sworn to such an agreement having taken place. It is not like any of those cases which have, some at more distant times and some more recently,\* been before the Court, of having knowingly delivered in fictitious vouchers, in which the quantity was stated at more than it really was, or articles were stated at a price which they ought not to bear; but it depends upon a participation in profits with the contractor. I do not mean to deny (and I have admitted to the attorney-general) that, in point of law, supposing this to have taken place, it would have been a breach of public duty, I do admit it would have been so, on the implied ground of duty, independent of any condition for that purpose; but when the charge assumes the shape of an accusation of fraud, when this is stated to have been done with an intention to defraud the crown, it becomes a matter of very different consideration whether, upon the face of the indictment itself, the profits alleged to have been shared were undue and exorbitant profits, or are merely stated to have been large profits, which is consistent with those profits, which a merchant may honestly make. And, therefore, I think it necessary to point out to you that it is not averred on the face of this indictment, that the profits Mr. Jones is alleged to have participated with Mr. Higgins, were undue and exorbitant profits made by Mr. Higgins, but merely those profits which a merchant may make. For if they had meant to bring forward a charge of fraud, and a participation of profits beyond what ought to have been made, they should, by the indictment, have drawn our notice to a charge of that description; and then, we should have entered into a calculation whether or not these profits were such as a merchant might fairly make. For the attorney-general will give me leave to say, that on a criminal inquiry like this, much as we should respect his assertion on any other occasion, the fate of a man and of those connected with him, is not to be disposed of by saying that he had attempted to make a calculation, comparing the extent of profits with the extent of charge, to show they were excessive. My argument is, that if they had intended to put their case upon any such footing, they should, upon the face of the indictment have alleged them to be exorbitant,

\* Mr. Rose.

\* See the preceding case.



which they have not done, and therefore, it amounts to no more than a participation of profits, which must be taken to be such profits as a merchant might lawfully make. Therefore, though I do not mean to contend that the sharing in such profits was not a breach of public duty, still it would have been a very different case if Mr. Higgins had been permitted to charge beyond a fair mercantile profit to enable Mr. Jones to share in the excess; because, undoubtedly, though in point of law it is not to be justified, in point of practice, we know, it has happened, that men who have meant to do honestly and fairly, have become interested with those who have provided the supplies for the public service, upon a feeling, however false, and upon a footing not to be justified, but believing that if they merely shared in the fair profits, they committed no offence; and I point out this to show that the charge, as it stands, is stripped of every other imputation of fraud, and resolves itself into a mere breach of public duty, the having become a sharer with Mr. Higgins in these profits, taking it that the profits themselves were reasonably and properly made.

Having stated this, it becomes necessary upon this most important occasion to the individual who is now upon his trial before you, that I should state a principle of law upon which the attorney-general and myself are not likely to differ. It is one which you must never lose sight of in the progress of the present inquiry: that the evidence by which the fact which constitutes the criminal charge, is to be established, is as much a matter of law (that is subject to legal rules) as it is matter of fact that the fact itself, when established, shall amount to legal guilt. And therefore, the question will be, upon the consideration of this case, whether it be possible for you, consistently with the first principles of evidence to convict this gentleman upon the evidence which you have this day heard.

I will explain somewhat more distinctly what it is that I mean to maintain upon this part of the case. I will suppose, for the purpose of illustration, that, instead of this being a charge of fraud merely against the defendant, it had been a charge of the highest possible description; a charge of high treason—of a conspiracy to take away the king's life; and I will suppose, farther, that it had happened, by accident, that my learned friend who sits by me, instead of being as the first law officer of the crown employed to conduct that prosecution, had been called in court as a witness to prove it; why, gentlemen, after the attorney-general had sworn to all the facts within his knowledge, in the way Mr. Higgins has pretended to do this day, if that had not been followed up by the testimony of another witness, the defendant must have been immediately acquitted; and yet is there any man living who would believe that the attorney-general, as honourable a man as ever lived, would on his honour make an assertion not of the strictest veracity? is there any man who would believe

that he would come into court to convict a man falsely? When the attorney-general had retired from the court under these circumstances, there is no doubt that every man would believe every circumstance which the attorney-general had related: but yet, under such circumstances you could not convict the defendant, because the rule of law is peremptory; it requires a certain degree of proof which must be given to warrant a conviction; it requires that to every overt act of treason two witnesses shall be called, and, therefore, though it might be proved by the attorney-general as a witness on the floor of the court, though every one of you should believe every word of what the attorney-general had stated upon his oath, still you would be bound to say that the prisoner was not guilty.

Now, gentlemen, what is the use I wish to make of this observation? I trust no man will be so absurd as to suppose that I mean to insinuate, that because the law has required in a case of a certain description that there shall be two witnesses to convict in that case, therefore there must be two witnesses to convict in this case also: I do not mean to make any such absurd observation; but the way in which I apply it is this, that cases of this sort do not depend upon the credibility of the witness or the probability of the story told; for, however credible it may be, still if a witness stands forward in a character under which the law says, unless confirmed he shall not have credit, even if the jury believe the story he tells to be true, still they cannot convict upon his testimony. And I state this to meet an observation made by my learned friend in the course of his address, "What," says he, "can it be supposed that Mr. Higgins would accuse Mr. Jones, if Mr. Jones was not guilty? the fact of which he accuses him, is the participation of profit with himself; and if he did not accuse him he would not himself appear guilty, and would want no protection." But the fallacy of that observation is, that it makes it a question, on each occasion, whether the story ought to be believed; instead of putting it upon the rule of law; where a man is proved to be an accomplice, unless he is confirmed he cannot be believed; and, therefore, I state that, if this were a subject on which you were left to form your own opinion out of court, and were not sitting in the seat of justice—even if under such circumstances you should be of opinion that the story told by Mr. Higgins commanded your private belief, yet I state (subject to the direction you will hereafter receive from the noble and learned lord), if Mr. Higgins stands in the situation of an accomplice unconfirmed, it is utterly impossible, that, on his testimony, Mr. Jones can be convicted upon the present occasion.

Having given this answer to the observations of the attorney-general, I shall now proceed to examine (independently of the rule of law as it applies to the testimony of an accomplice) under what circumstances Mr. Higgins appears before you. The story told by this gentleman

is, that upon a proposal which, in some degree at least originated with himself, he had in the year 1795 a confidential communication with a gentleman of the name of Rose, and through him with Mr. Jones. I am now taking it up upon the footing of the representation made by Mr. Higgins himself; and I need not tell you that I am not now intending to vindicate the conduct of any of the parties, supposing the transaction represented to have taken place; but I am trying the degree of credit due to Mr. Higgins. And I ask you, as men, as gentlemen, as men of honour, what degree of credit would you give to any man who, having entered into an agreement of this sort, and under that agreement having derived advantages to the extent Mr. Higgins had, should afterwards, without the compulsion of the law, come into a court of justice for the purpose of accusing and betraying the man who, upon his own representation and by his inducement, had entered into this confidential transaction with him?

We are not now assembled in a court of honour; and I do not mean to say, that because a man is guilty of that which, upon the face of his own testimony, is a scandalous violation of his own honour, he cannot be listened to in a court of justice: but the question is, whether the fate of a person of the description and character of Mr. Jones shall be decided, and his comfort be for ever destroyed upon the testimony of a witness such as Mr. Higgins. The account Mr. Higgins gives is, that he comes forward voluntarily, not merely to confess his own turpitude, not from feelings of repentance, not under the influence of remorse, for there is no man such a driveller as not to perceive that the object this gentleman had in view in disclosing a transaction of this sort, was, that no prosecution on the part of the crown should be instituted against him. My learned friend, the attorney-general has presented to you this most extraordinary circumstance. After having discovered a gentleman of the name of Rose, who could have confirmed the testimony of Mr. Higgins as to the agreement in the first instance, after having subpoenaed him, after having been challenged to call him into court by a note which the attorney-general had received in the course of his speech telling him Mr. Rose was present, my learned friend does not think fit to call Mr. Rose, and he concludes his case without producing him on the part of the crown.

Now, here again the attorney-general is doing me the honour to take a note of what I say; and, therefore, it may be necessary that I should explain myself more distinctly. I urge the observation to this extent, and to this extent only, that there is not, on the part of Mr. Higgins, this excuse, that he was *compelled* to make the disclosure; for he stands in the same situation as Mr. Rose, and if Mr. Rose could not be compelled to make the disclosure (which was the reason the attorney-general gives for not calling him), neither could Mr.

Higgins. What then can be said of a man, who, not being bound to make the disclosure, from reasons of personal convenience comes to accuse a man who, according to his statement, had this dealing which, from the nature of it was confidential, and that I am sure every man must acknowledge increases the turpitude of the man who makes the declaration. It is to that extent, and that only, that I urge this accusation. If Mr. Rose could not be compelled to disclose what took place between him and Mr. Jones, neither could Mr. Higgins; and therefore Mr. Higgins comes forward to give (for some reason of which you will judge) the testimony he has this day given before you.

But is or is not Mr. Higgins an accomplice? for on this part of the case that is the only question for your consideration. What is the account he gives of himself? he not only enters into this agreement; he not only is the person who goes into the cabin and mentions the circumstance to Mr. Jones, but he is the man who conducts the whole detail of the business, and who (according to his own account) being bound to provide these supplies to the amount of nearly one million of the public money, does, sometimes by himself and sometimes by his clerk, Mr. Winter, or his partner, who has been produced this day, put in false accounts; and upon his own recorded confession, stigmatised by his own testimony, he stands this day before you in the light of a person who, if these facts were proved against him by another and not by himself, would be subject to that very heavy sentence which a person for whom I have a great regard is now unfortunately undergoing.\* These are fictitious vouchers of a very different nature and to a more mischievous extent indeed; and this is avowed by Mr. Higgins to have been his conduct upon this occasion. Therefore, independent of the rule of giving no credit to an accomplice if not confirmed, Mr. Higgins being an accomplice to the degree stated, (and I speak now from his representation of his own conduct; I know nothing of him out of this court and out of this cause; all I desire to call your attention to is that part of the evidence which by and by will be read to you from his lordship's notes), suffer me to ask, would you, upon the testimony of a person who has proved himself to be a man of such moral turpitude, feel it decent in point of justice, to give your belief to a person of this description unconfirmed, to establish a corrupt agreement and afterwards a corrupt receipt? For (whatever may be the other parts of the testimony) with reference to the fact of a corrupt agreement, and the fact of a corrupt receipt, there is no paper under the hand of Mr. Jones, there is no person (except Mr. Higgins) who has pretended to have been privy to one of these transactions with Mr. Jones. The main points of the cause, namely, the agreement and the receipt stand upon the evidence of Mr. Higgins alone; and therefore

\* See the preceding case.

if Mr. Higgins is an accomplice, and not confirmed by the testimony of the other witnesses, I state, with the utmost confidence (subject to the correction of his lordship), that no jury, acting upon the principles which relate to accomplices, can convict a man upon the testimony of such a witness, however credible to command private belief; I affirm that it is enough to say he is an accomplice, and not confirmed, to entitle the defendant to an acquittal.

If then the fact be so, really the remaining part of this cause resolves itself into a very narrow consideration; for the single question is, is or is not Mr. Higgins confirmed? Now let us see in what manner confirmation is attempted to be afforded to the testimony of Mr. Higgins. And first let us take it as to the American adventure. With respect to that, it is necessary in the first place that I should call back your attention to what the charge is. It is a charge of a corrupt agreement, under which Mr. Jones is stated to have received a half of the profits made by Mr. Higgins, amounting to between eighty and ninety thousand pounds; and it is quite impossible to look not only at the substance of this accusation, but at the frame and form of it, without at once perceiving that the charge is adapted and accommodated to the story Mr. Higgins has told of the transactions which actually took place in the West Indies. For I need not remind you that, of all men living, the person who knew best what the American adventure was, was Mr. Higgins himself; and the testimony of Mr. Higgins is, that, before he left the West Indies, he had actually settled the accounts with Mr. Jones, which depended upon the supposed corrupt agreement with respect to the participation of profit. And how had he settled them? Why, he had settled them finally (if their case be true) on a correct exhibition of accounts; winding up and closing the adventure by an exhibition of the different articles of supply, and then dividing the profit, one half to Mr. Jones, and the other two quarters to Mr. Higgins and Mr. Rose. This is the statement on the part of the crown; and, if it stands on the credit of Mr. Higgins alone, it is testimony which you cannot believe; because he is an accomplice who is not hitherto confirmed. Then how do they seek to confirm him? by the circumstances of this American adventure; and, no doubt, that is a most material part of their case, because the way in which they apply it is this, it is not only to show on the ground the attorney general has last taken (and there it was not necessary) that there was a participation of profits on public supplies, but the real and true use of this was, as evidence of confirmation, by producing a receipt in the hand-writing of Mr. Jones himself; and there is no doubt that, if they had produced a receipt in the hand-writing of Mr. Jones himself, on the footing of a corrupt agreement, applying to a share of profits in public supplies, it would have been impossible for me to have addressed you for a single in-

stant. I should have closed with stating that the case was too strong to render it proper for me to take up his lordship's time and yours; and that I should reserve what I should have to say for a future opportunity. But this most weighty fact has a directly contrary effect upon the testimony of this gentleman himself; for I hope that I am not, in the warmth of speaking, expressing myself too strongly when I say, that I pledge myself to satisfy you, that it is utterly impossible to say, that the receipt given by Mr. Jones was a receipt upon the footing of any corrupt agreement entered into between Mr. Higgins and himself. Have we forgotten altogether what is the case attempted to be made by the counsel for the crown? its essence is a corrupt agreement. It makes no difference at all, as between Mr. Higgins and Mr. Jones, whether it was a corrupt agreement or a legal agreement; for it was equally intended to be binding; the payment on this American adventure was optional; but that one word puts an end to the whole as matter of charge: the moment Mr. Higgins states it was matter of choice, it ceases to have been matter of agreement; because that which was matter of agreement was binding and not matter of choice: therefore, on the testimony of Mr. Higgins, looking to what was its real meaning, I submit to you with considerable confidence (subject to his lordship's correction), that the American adventure was distinct from any agreement to which Mr. Higgins refers; and Mr. Higgins has himself stated, 'that he considered it a private adventure. How does he mean private? Why, distinct from that to which he represents the supposed agreement to apply; which was that rendered under the contract for the public supply; and what proves it more strongly is this, all these transactions are entered, as they say, in the books of Mr. Higgins in the West Indies; but, I should be glad to know, if this constituted part of the transaction to which the supposed agreement referred, why was not it brought to the general account in the West Indies? its being omitted in that account proves, therefore, that it was matter of choice, and not matter of compulsion, as stated by Mr. Higgins; that it was a payment he made, not on a fair liquidation of accounts which had reference to a supposed agreement as between Mr. Jones and him, but was upon what he calls a private adventure. And I shall have deceived myself most grossly, if his lordship shall be of opinion or you shall be of opinion under his lordship's direction, that it can be said that this payment on account of the American adventure was a payment made on the part of Mr. Higgins and accepted on the part of Mr. Jones, upon the footing of a corrupt agreement in the West Indies, to divide profits. When was it made? Not at the time Mr. Higgins was in the West Indies, but after his arrival in this country. I might go on till midnight, endeavouring to enforce these observations, but it appears to me the facts are so evident and the consequences

so clear, that by saying more I should only waste your time and perplex and confuse the case; and therefore, leaving it upon these observations, I submit to you that the American adventure which introduced into the cause this single scrap of paper under the hand of Mr. Jones, has no reference whatever to this case.

Before I go into an examination of the other part of the case, I will beg leave very shortly to take notice of an observation made by Mr. Attorney-general. I am sure there is no man more disposed than I am to conduct public prosecutions with due liberality; but I cannot help thinking he has acted harshly, when he imputes to me that I do not call Mr. Rose, who is stated by the counsel for the crown to have been a party to this agreement. They subpoenaed him; they are bound to produce him; and it appears to me an extraordinary ground (when a witness is known to be subpoenaed by the crown), that being called upon by the witness himself, to produce him in Court, being apprized that he is present, they not only abstain from it themselves, but they desire the jury to infer guilt in the defendant, because he will not produce that witness whom they will not bring forward. I am glad, upon other occasions, to be instructed by the attorney-general in my professional duty; it would be the grossest arrogance in me to think of instructing him, but I will tell the attorney-general what I would have done; I would have called the witness into Court, and would have left him to object that he was not bound to answer. That is the course which, in the conduct of a public prosecution, I think the attorney-general ought to have pursued; but it is not dealing very kindly (he will forgive me for saying, not very liberally) to charge it upon the defendant that he does not call a witness who is attending with his subpoena in his pocket, on the part of the crown.

But, why was I to call Mr. Rose? I do not mean to say it was not known what sort of story was to be told to day; for, unfortunately, these charges have found their way into every man's hand. But suppose I was not acquainted with the charges; conceive to what length this might go. How could I call Mr. Rose, if I did not know that he was to be a witness or what was the case? But if I did know that he was to be a witness on the part of the crown, that would be a reason for my not calling him. My learned friend asserts that Mr. Rose has refused to answer any questions put by them. I can assert with equal veracity, that he has refused to answer any questions put by us. And there may be many reasons why Mr. Rose may not chuse to come forward and be asked questions, the answers to which may subject him to prosecution; but is it to be charged against a defendant that he does not call such a witness? I aver that it was the bounden duty of the crown (where a story of such a sort is ob-

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truded upon a jury for the purpose of inducing them to believe it), when they state that there were only three persons privy to the transaction, and when they contrive to lay the scene in this way, to call not one witness merely, but each of the persons privy to it. When the agreement is stated to have taken place, where is the scene laid? In the room alone with Mr. Higgins and Mr. Jones, who cannot be called. When the payment takes place where does it happen? Only Mr. Jones and Mr. Higgins are present. And you have nothing under the hand of Mr. Jones to verify the transaction; and yet, with respect to these two material parts of the case, they stand upon the evidence of this accomplice only; though there was a man who, it is stated, might have confirmed him, I mean Mr. Rose, by proving certain conversations. Mr. Rose is not produced. There being but two witnesses, the one is not called to confirm the other; and yet, upon a case thus circumstanced, you are desired to convict the defendant. Under these circumstances, I am persuaded, I do you only justice when I suppose it cannot operate at all disadvantageously to the cause of the defendant, that he does not call Mr. Rose.

With respect to the American adventure, I have made all the observations that it occurs to me to make. Then what is the only confirmatory evidence that you have heard? It is the testimony of Mr. Winter. And you must always bear in mind, that though Mr. Higgins has stated that books were kept in the West Indies, and that certain entries were made in those books; and that he had a conversation with Mr. Jones; all that stands upon the evidence of Mr. Higgins: and, therefore, if Mr. Higgins be not to be believed, being an unconfirmed accomplice, he is not a bit the more to be believed, because he adds those other facts (likewise not confirmed), that books were kept in which particular entries were made. That would leave the case, as to Mr. Higgins, precisely where it was before.

But let us consider what other evidence there is in the case; and here, again, is something a little extraordinary. The entries in these books are stated to have been made by a person of the name of Winter: one would have thought, that in the conduct of a criminal prosecution, the man proper to be called was the man who had some knowledge of the facts themselves; for entries made in books are only evidence of facts at a distance of time: but it is extraordinary that the Mr. Winter, who made the entries is not called, but a Mr. Winter, who did not make them is called, stating that he knows nothing further than what he has been informed. The evidence of Mr. Winter leaves the case just where it was, without any confirmation of the story told by Mr. Higgins. As to the accounts, Mr. Winter has stated that, having called there upon a particular occasion, he remembers having had a conversation with Mr.

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Higgins, on the profit and loss account; and he thinks he furnished an account to Mr. Jones upon that occasion, though he will not positively swear that he did. Though pressed, he will not go the length of stating positively that, in point of fact, the account was actually delivered; but, when he is further examined, what is the story he tells you? Why, that the journal was upon the desk of Mr. Higgins at the time; and you are told by the attorney-general, that the ledger is formed from the journal: and yet, though the journal in which these entries were, must be in the possession of Mr. Higgins, the books themselves are not produced. No search is made after this account which is supposed to have been delivered; but you are to take, upon the testimony of Mr. Winter by whom these entries were not made, that an account was delivered to Mr. Jones from which a certain profit appears. He does not pretend to say he was present at any conversation or any examination into the account; so that, even taking his evidence in its fullest extent, it leaves the case standing upon the testimony of Mr. Higgins confirmed, so far as you may think the evidence of Mr. Winter may in any small measure confirm it.

But, after all, are there not some observations upon the degree of credit which may belong to Mr. Winter? Mr. Winter was a partner in one of these houses; he was a party to this extensive fraud upon the public; he tells you that he applied to one of these houses to deliver in false vouchers; and his inducement to do this, was, his being a partner in a house which had five per cent upon these supplies. Now here let me ask you, when a man of the credit and character of Mr. Jones is to be ruined by the verdict that you give to-day (if it is given against him), whether on the testimony of such a man as this, and when the American adventure only contradicts and does not confirm it, with any small confirmation by Mr. Winter, will you, upon such evidence pronounce a conviction?

My learned friend suggests to me, what otherwise I might have forgotten, that it is stated that the books were produced to Mr. Jones. On looking at the books the name of Jones no where appears. The account about which we have heard so much, purports to be only a general profit and loss, account in the name of Mr. Higgins himself; but in the books they have produced, there is no title of any account in which the name of Mr. Jones appears; but the only entries are with respect to the general profit and loss account of Mr. Higgins, subject no doubt to the general observations I have made; except that Mr. Higgins swears that there was a settlement of accounts between them, there is no one entry from the beginning to the end in which Mr. Jones's name appears.

I am not aware, that upon this case, I have now any observations to add to those which I have submitted to you. In truth, it lies within

a very narrow compass. I agree with the attorney-general, that if you believe Mr. Higgins, Mr. Jones is guilty; because undoubtedly Mr. Higgins has gone the length of swearing to the fact of a corrupt agreement; and he has gone beyond that, to establish by his testimony (if you believe it) the fact of the retention of money as a share of profits under that agreement. But what I submit is, that Mr. Higgins stands in the situation of an accomplice; that, as such he cannot be believed unless he is confirmed; that the only circumstances they have brought forward to confirm his testimony ought to have no such effect; for that, with respect to the fact of the receipt, it relates to the American adventure, and has no reference to the corrupt agreement stated on the indictment; and with respect to the evidence of Mr. Winter, I would repeat it appears to me that he speaks from an account not produced, and that his testimony is liable to the observations I have made as to the fact with respect to the false vouchers and false certificates.

I am sure you feel that this is an inquiry of the first consequence. It involves all that is dear to this gentleman, to his children, and to his connections; exposing him to ruin in its worst shape. If you think this a case of any doubt, you will give him the benefit of that doubt, and acquit him; and particularly when you consider that, up to the period of his acquaintance with Mr. Higgins, he is proved, in every public situation and every connexion in life, to have acted most honourably and uprightly; so much so, as to have had the appointment in question conferred upon him in consequence of his previous good conduct.

I shall call a great number of persons to whom this gentleman has been known for many years, persons who have known him through all those situations, and who will tell you what his general conduct and character has been. If there be any doubt, you will give him the benefit of that good character which he has sustained; but I submit to you, under his lordship's direction, that this is not a case of doubt, but one on which the defendant is intitled to an acquittal.

#### EVIDENCE FOR THE DEFENDANT.

General *Abercrombie* sworn.—Examined by Mr. *Park*.

Were you with your father, sir Ralph Abercrombie in the West Indies?—I was, in the years 1796 and 1797.

Had you known Mr. Jones before that time?—I had not.

I believe you were the colonel of a regiment at that time?—I commanded the 53rd regiment at that time.

You were also, I believe, part of that time, quarter-master-general?—I was deputy quarter-master-general, and at the head of the department.

At this time Mr. Jones was commissary-general?—He was.

Had you much opportunity of knowing his conduct in his situation as commissary-general, and superintendent of stores?—Not a great deal, as commander of my regiment. I had latterly, when I was at the head of the quarter-master-general's department.

I take for granted, you were a good deal with your father?—Not a great deal; I was occasionally.

Mr. Jones had of course, a great deal to do with the commander-in-chief on the station?—Necessarily so.

In what manner did Mr. Jones, so far as came under your observation, conduct himself?—As far as came under my observation, the commissariat department was perfectly well conducted at that period.

Did you, during that time, from any thing which occurred to yourself, as quarter-master-general, or from any thing which passed from your father, hear any complaints made of the conduct of the office?—I do not recollect any.

Mr. Attorney-General.—As far as this goes to general character it is evidence, but no further.

Lord Ellenborough.—General character is evidence, but whether this department may have been conducted in the best manner possible is nothing to the purpose. What was his general character for integrity is the question.

Mr. Park.—What was his general character for integrity, as far as came under your cognizance?—I never heard any thing against his character at the time I was in the West Indies. I never saw any thing improper.

Mr. Attorney-General.—Was general Maitland in the West Indies at the same time?—He was second in command.

General Cayler sworn.—Examined by Mr. Topping.

How long have you known the defendant, Mr. Jones?—About eight and twenty years.

Were you in the West Indies, when Mr. Jones was there as commissary-general?—I was; I arrived there in the year 1797.

He had been there for some time before?—Yes, he had; he was deputy commissary-general during my command in 1788.

You knew him before the time he was commissary-general, filling situations of public trust?—Yes, I did.

And your personal knowledge of him has been for eight and twenty years?—Yes.

I am not permitted by the rules of law, to examine minutely into the character of the defendant; but, from the knowledge you have had of him for eight and twenty years, what has been his general character?—I always heard him spoken of in very high terms, as a very correct man; and I found him to be such, while he was under my command; in consequence of his going out last time he reduced the expenses of the army in the West Indies.

Lord Ellenborough.—We cannot go into particular facts.

Mr. Topping.—From your own personal knowledge of him, and the character you have heard, do you consider him a man of strict honour and integrity?—I have no reason to think otherwise.

Mr. Colin Thompson sworn.—Examined by Mr. Marryat.

I believe you were a merchant residing at the Island of St. Kitt's?—I was.

How long have you been acquainted with Mr. Jones?—About ten years.

Did you know him while he executed the office of commissary-general in the West Indies?—Yes.

Had you any opportunity of seeing in what way he conducted the transactions of that department?—We had several transactions with him—

Lord Ellenborough.—We cannot go into that; it is useless that you should give me the trouble of telling you each time that the rule of law does not permit this.

Mr. Marryat.—What was his general character and reputation?—I have always heard it was very good in his official capacity.

In your transactions did you find it so?—Most perfectly so.

—— Jourdan, esq. sworn.—Examined by Mr. Park.

You are a barrister at law?—I am.

Did you reside in the West Indies?—I resided in the West Indies from 1783 to 1797.

Did you know Mr. Jones in the West Indies during all that time?—I knew Mr. Jones in the West Indies personally during his residence in the Island of Barbadoes, which was from 1783 to 1793 or 1794: at that time he executed the office of public secretary to the island, which was an office of great confidence.

Did you continue to know him from 1793, till the time of your quitting the West Indies?—Not particularly; his residence was, after that, removed from Barbadoes.

During the time you did know him, what was his general character for integrity?—During the whole time I knew him I considered him a man not only of unexceptionable but of most honourable character.

Lord Ellenborough.—It is reputation; it is not what a person knows. There is hardly one question in ten applicable to the point; it is very remarkable, but there is no branch of evidence so little attended to.

Mr. Attorney General.—My lord, that arises, in some measure, from one's delicacy of interfering.

Lord Ellenborough.—Certainly; but it is my duty to interfere.

Mr. Jourdan.—I speak of his general character.

—— Moore, esq. sworn.—Examined by Mr. Topping.

I believe you filled the office of attorney-

general of Barbadoes?—Yes; for eight or nine years.

During what time did you continue to be attorney-general?—From 1787 to 1796.

During that time did you know the defendant, Mr. Jones?—I knew Mr. Jones perfectly well, when he was secretary of the island, which was eight or nine years: he not only filled that office but several others, and his general reputation, during the whole of that time, was highly to his credit. He was a man of the soundest integrity and the highest principles of honor. That was the general reputation he bore in the colony at that time.

*Robert Jones, esq. sworn.—Examined by Mr. Park.*

You live in Hereford-street?—I do.

Were you at the bar in the West Indies?—Yes.

At what period did you know Mr. Jones?—I knew Mr. Jones from 1778 to the year 1784.

I believe he is no relation of yours?—No, he is not.

During the time you knew him, what was Mr. Jones's general character for integrity and honour?—During the time I lived in Barbadoes, Mr. Jones was secretary of the island, and during that time he was always looked upon as a man of a very immaculate character.

REPLY.

*Mr. Attorney General.*—Gentlemen of the jury; I have some hesitation whether, in a case so very plain, I should address you at all in reply; but some observations were made by my learned friend which I think you may suppose require from me some sort of answer, by way of taking off their general effect, rather than any particular effect they can have upon this case; for there never was (in the course of my experience at least) any case of the most trivial assault, supported by more powerful testimony on the part of the prosecution, and so perfectly unresisted (because there were no materials with which a resistance could be made) on the part of the defendant.

In the first place I will state to you what is the effect of the testimony to Mr. Jones's general character. It produces this melancholy reflection, that men who in other respects may conduct themselves honourably and uprightly towards those with whom they have communication, feel themselves unrestrained in any transactions which they may have with the public, and suppose that neither their character for honour nor integrity is impeached by practising the grossest frauds, provided those frauds affect only the public purse. If there were a doubt in this case—if the evidence left you in any hesitation whether Mr. Jones were or were not guilty, it would be fit that you should pay regard to his former character; because it is unlikely that a man possessing a character for general uprightness and integrity should practise a particular fraud; but if the evidence of that particular fraud be decisive and conclusive

the fact of his having possessed the good opinions of those who have not been cognisant of this transaction, or have not had the means of informing themselves, or who have known every other act of his life, cannot obliterate from your minds the memory of those facts which have been proved against him and to which he has not endeavoured to give any answer; an answer to which must certainly have been within his power if any answer had been consistent with the truth.

My learned friend, in inveighing against my witness, has in effect spoken more harshly of his own client than ever I have spoken or I shall speak of him. For every expression of harshness that he has uttered against Mr. Higgins—every imputation that he has endeavoured to fix upon him—every reflection that he has cast upon the conduct of Mr. Higgins, the merchant, recoils with redoubled weight upon the head of his client, the commissary, who was bound by the duty which he had taken upon himself, by the duty which he owed to his employer and his king—duties impressed upon him as they were repeatedly by the instructions which were sent to him—who was bound by the strong tie of all these duties, to pursue an even course in these transactions. Mr. Higgins's business was to make as good a bargain with the crown as he could; Mr. Jones's business was to prevent Mr. Higgins from making too advantageous a bargain for himself; and when my learned friend tells you that you ought not to convict Mr. Jones of the offence which is charged against him upon the evidence of so odious a witness as Mr. Higgins, how contemptible, how despicable, how odious does he represent him whom I am accusing, to be; who was not betrayed by Mr. Higgins into this agreement, but who forced Mr. Higgins, in self-defence, into the commission of these frauds, from which Mr. Jones was himself the only person who derived an undue profit. Mr. Higgins was entitled to a fair, to an ample, profit upon this transaction; and he would have been content with it, but for Mr. Jones.

My learned friend tells you that Mr. Jones did not first solicit Mr. Higgins, but that Mr. Higgins first applied to Mr. Jones: that is verbally correct, but substantially a contrary representation would be more according to the fact: it is verbally true that Mr. Higgins applied first to Mr. Jones, desiring that he might be continued in the contract which he had under general Knox; but it is not correct that he applied to Mr. Jones, and offered him any part of the profits; but after he had made the application that he might be continued in this employ by Mr. Jones, Mr. Hugh Rose brought him Mr. Jones's answer.—“It is true that you may be continued in this employ, but it is upon the hard terms that you must yield a moiety of your profits to Mr. Jones, as a bribe to him for continuing you in this supply; and to me as the pander of his iniquity, you must yield half of the remaining moiety; namely, a fourth.

Does that originate with Mr. Higgins?—No; the application originates with Mr. Higgins, but the reply to it with these nefarious conditions proceeds from Mr. Jones: it is not, therefore, by Mr. Higgins that the first movement towards this iniquity is made; it is suggested in the first instance by Mr. Jones to Mr. Higgins.

My learned friend tells you the question in this case is only upon the fact. It is so. The fact which I charge upon Mr. Jones is, that he entered into a corrupt contract with Mr. Higgins to share with him the profits; and by that means he removed from Mr. Higgins that check which he was paid for holding over him; namely, the check of seeing that his supplies to government were made at a fair price. It has been observed by my learned friend, that there is no charge against Mr. Jones of having sent in false vouchers to the public, or of having debited them with false quantities; that the charge is only that he had a share in the profits. It is true, and it is an aggravation of his offence, that the charge against him is, that he had a share in the profits—in the profits to what extent? In the profits upon the whole of this transaction, from the beginning to the end; that operated upon the whole. The effect of false quantities or of false vouchers ends with itself; it imposes upon the public a fraud with respect only to that quantity which is falsely charged, or that voucher which is falsely rendered; but a mean, base, and fraudulent participation of profit with the contractor, pervades every part of the contract—lays upon him a necessity (unless he chooses to be ruined) of cheating the public by an over-charge in every article that he renders to them; and by so much is this more dangerous to the public than false quantities or false vouchers, as this extends over the whole of a large and ample concern, whereas the effects of false quantities and false vouchers terminate with themselves.

My learned friend tells you that we have not asserted on the face of this record, that the profits that were taken were exorbitant, and that, therefore, that is no part of the charge against Mr. Jones. He tells you likewise, that the sharing in a fair mercantile profit (although it may in itself be a wrong thing), is yet a thing very commonly done, and that many good men have done it, without any apprehension that they were doing wrong. That is impossible: it is impossible that any man (above the degree of a driveller) sent out by government, and paid by them for holding a check over contractors, and for purchasing of contractors at the lowest possible price, should not think he were doing wrong when he shared in the profit with those contractors; because he must know that those contractors are at least content with so much of the profit as remains after the commissary has taken his share, and if that be so, that share which the commissary takes, he ought to carry to the credit of government, and to inform government that

he has provided the supplies so much the cheaper. He knows that the contractor, if he is to have one profit for himself and another profit for the commissary, must overcharge the article; he knows that men cannot live without a living profit; and he knows that if he divides the profit which this man makes, the man must charge so much the more in the price at which he renders the article to government; and it is mockery to tell us that those who are employed by government for an ample remuneration, paid out of the government purse, to make the best bargain they can with contractors, can, believing themselves to be acting like honest men, enter into partnership with the contractors, and, becoming themselves contractors, become interested in the high price which is charged; because the higher the price at which the contractor furnishes his goods, at so much higher is the profit which the commissary shares with the contractor. And if they tell us, that honest and honourable men have ever done this, it requires only to be explained to you to show the impossibility of such a proposition being founded in truth.

My learned friend tells you, that this case is supported only by the evidence of Mr. Higgins, and that Mr. Higgins is an accomplice, which is an odious character; but he is rendered odious only by the contamination of Mr. Jones. He tells you that Mr. Higgins is an odious character, and that upon his evidence alone you will never think of convicting Mr. Jones. I have heard no answer attempted by my learned friend to that which I stated, when I opened this case to you; that Mr. Higgins is innocent unless Mr. Jones is guilty; for the charge against Mr. Higgins is, that he was concerned with Mr. Jones in this nefarious transaction, and unless you suppose Mr. Higgins to invent a story of his own guilt, in order to fix guilt upon Mr. Jones, there is no possible ground upon which you can diminish the credit due to him. I stated to you that it was not like the case of a highwayman taken for committing a robbery with another, and who escapes by discovering who that other was; for here, Mr. Jones was the only man on earth who could conspire with Mr. Higgins in committing this fraud upon the public. Mr. Jones was the only person benefitted by it, for Mr. Higgins went off, at last, only with that which, perhaps, it is fair he should carry off, namely, one quarter of the profits; the public, perhaps, would not have much ground to complain that he supplied these goods taking only one quarter of the profits; and it was only Mr. Jones forcing Mr. Rose and himself upon his back which rendered the profit exorbitant; and, therefore, taking this to stand altogether upon Mr. Higgins's evidence, there is no reason why you should entertain a doubt of his story; on the contrary, you may be perfectly assured that if the story be not true, he would not have come forward to state it, for he could have no inducement upon earth to do so.

With respect to the rule, that a culprit is



not to be convicted upon the evidence of an accomplice, I never yet heard that rule applied to the case of a misdemeanor. Suppose I had nothing to support Mr. Higgins except the circumstances arising in Mr. Higgins's testimony, — my learned friends say, loud enough for the Court to hear, that they never heard this distinction. I say, I never heard the objection taken in the case of a misdemeanor and that I have heard the objection over and over again in other cases: a trespass is a misdemeanor, an assault is a misdemeanor —

Lord *Ellenborough*.—The conviction would be legal if it was on the evidence of an accomplice. The judge advises the jury not to proceed upon that alone, but no person can say the conviction would not be legal.

Mr. *Attorney General*.—That, considered as a rule of discretion which the judges impose upon themselves, I believe, never has gone beyond a felony. However, I am perfectly indifferent upon that head. I called Mr. Higgins to state to you what the transaction literally was; but I hardly wanted his testimony; I could have almost proved this without Mr. Higgins. But my learned friend says, that Mr. Higgins is disgraced by coming here voluntarily, that he could not have been compelled to answer and he exemplifies that by my not calling Mr. Rose. But there is a wide distinction between the conduct of Mr. Higgins and the part which Mr. Higgins took in this transaction and the part which Mr. Rose took as well as that which Mr. Jones took. Mr. Jones was an officer of the public; the interests of the public were committed to him; Mr. Rose was also an officer of the public; each of them violated his public duty if he defrauded the public in that line in which he was employed. Mr. Higgins was not employed by the public. Mr. Higgins, in justice to himself, would make as good a bargain as he could; and, therefore, he does not stand chargeable with the same degree of guilt or any thing like it that the others do; and unless I could have implicated Mr. Higgins in a conspiracy, I could not have prosecuted him at all. But the other two stand guilty as public officers. You will ask me, perhaps, why I could not prosecute Mr. Rose in this case, and why I did not prosecute Mr. Rose with Mr. Jones? That is a question that very naturally arises in the case. It was not convenient, for reasons which will occur to his lordship when he refers to the statute upon which this prosecution is instituted in this country. — I saw reason, or rather I should say my predecessor in the office which I hold (I concurring with him certainly) saw reason, for not joining Mr. Rose in this prosecution: but one good reason that I have for not choosing to call him upon the part of the crown was, that he remains amenable to the law for the part that he has taken; and he will sooner or later probably discover that that responsibility rests upon him. I have said enough to explain to his lordship the line I have taken; and it is not necessary for me to go into any further explanation of it.

My learned friend tells you, by way of disgracing Mr. Higgins, that Mr. Higgins admits that he rendered accounts of stores that he furnished to the commissariat under false names. Is it seen to what extent that goes? Could that be for any other purpose than that it might not appear to the government at home, that all these stores were furnished in Higgins's name? But did not all those accounts pass through Mr. Jones's office, and under Mr. Jones's inspection? And did not Mr. Jones, when he paid Mr. Higgins for stores furnished by him, Higgins, and sent him his vouchers for them, as if they were furnished by other people, did not he see that the vouchers which denoted the goods to have been furnished not by Mr. Higgins but by others, were false? And shall I be told it takes from the credit of Mr. Higgins against Mr. Jones that these vouchers were so delivered to Mr. Jones, when it was for the purpose of befriending Mr. Jones, and enabling him to return to his employers here vouchers which he must have known to have been fictitious. In truth all that was done by Mr. Higgins, all that is imputed to Mr. Higgins, as crime, was occasioned by Mr. Jones. It is stated that Mr. Higgins charged enormous profits; he did; why did he? how were those profits to be divided? half of them to Mr. Jones, and half of the other half to Mr. Jones's jack-all, Mr. Rose, the person whom Mr. Jones employed to close this transaction with Mr. Higgins. And shall Mr. Jones be heard to impute it to Mr. Higgins that he made extravagant and improper charges against government, when he, Mr. Jones, swept away from Mr. Higgins one half of the fair profits Mr. Higgins might have made upon this transaction?

My learned friend tells you, that Mr. Higgins is not supported by any evidence: that the whole stands upon his own testimony. If it did, he is credible, and there is no ground whatever for your distrusting any part of his evidence. My learned friend undertakes to dissect this case, to show you where we have attempted to confirm him and where we have failed; I will follow him in that course. He says, we have endeavoured to confirm him with respect to the American adventure: and he says, if that had really applied to the subject of this agreement, when we introduced that receipt of Mr. Jones, it would have been such a confirmation of Mr. Higgins, that he should have folded up his brief and reserved himself till the defendant was called up for judgment; but he says it did not, and that that he will prove out of Mr. Higgins's own mouth; for that Mr. Higgins says it was optional in him to have given Mr. Jones a moiety of this or not, and that he thought Mr. Jones was not entitled to it. Gentlemen, that is taking a part of Mr. Higgins's evidence and not the whole of it; Mr. Higgins tells you, that, as he first saw the matter, his agreement with Mr. Jones did not, in his opinion, entitle Mr. Jones to any share of the profits on this American adventure; but that upon further consideration and considering

the generality of the agreement, he did think that it might be construed to comprise it, and, therefore, he rendered an account and paid a moiety of the profits upon this adventure as ranging itself under the agreement; and when I asked him whether there was any other account upon which he could pay, or upon which Mr. Jones could suppose that he paid him any sum of money, except that agreement that they should share the profits of his general adventure, he said there was none, and that he did pay it upon that account. I will suppose him to have been mistaken; but if he did pay it upon account of that agreement, and if Mr. Jones did actually receive it, is not Mr. Jones's receipt of the money from Mr. Winter, who paid the money as the agent of Mr. Higgins, a confirmation of Mr. Higgins's testimony, that this agreement was entered into? Is not the payment of a sum of money ranging itself under the agreement in the ultimate view Mr. Higgins had of it, and the receipt given for it a confirmation of Mr. Higgins's testimony, that this was paid under that agreement? It requires only to be stated, to lead you by the statement to the conclusion.

One observation seemed to be wrong almost from my learned friend by the remark I made as to his not calling Mr. Hugh Rose upon this occasion. He did me the credit to say, that, generally, I had not pressed criminal prosecutions too hardly against those who were the subjects of them; and, with a kindness which I am sure I never shall forget, and I never can forget it because I am reminded of it by every act of my learned friend's professional life, in which I happen to be concerned against him, speaking of my general conduct in this way he makes this particular case an exception. He says he thinks I dealt hardly with Mr. Jones in leaving Mr. Hugh Rose to be called as his witness, and not calling him myself; that if he had stood in my situation, the course he would have pursued would have been this; he would have called Mr. Hugh Rose—he would have presented him as a witness, asked him questions and left him to have objected or not. Gentlemen, my learned friend would not have so conducted himself; because if he had been in my situation he would have had in his mind that which I had in mind, a contemplation of what conduct it might hereafter be fit to pursue with respect to Mr. Hugh Rose; and I am perfectly assured that my learned friend would not have conducted himself with a knowledge of this additional fact on his mind, as he stated just now he would have recommended to me; because if he had, he would have betrayed his duty to the crown. But how can I have dealt unfairly towards this defendant in leaving this witness to him? Mr. Higgins, whom I agree to be an accomplice in this case, does not come forward like a common accomplice, saying this transaction took place only between me and the person whom I mean to charge; but he states that it passed through a third person, Mr. Hugh Rose, to the defendant

whom he means to fix with the transaction. He puts it, therefore, in the power of that third person to contradict him. Now, what ground of complaint is there that I do not present this third person as a witness? My learned friend, if his client is guilty, has no ground of complaint; if his client is guilty he ought to be convicted: but let us suppose him to be innocent—is it possible that this can suggest itself to his mind as any ground of complaint? If his client be innocent Mr. Hugh Rose would almost spring from the grave to say so. If not only Mr. Jones, but Mr. Hugh Rose were stated to be guilty, where would be the difficulty of calling Mr. Hugh Rose to contradict him? If this charge be true, if Mr. Jones did enter into this agreement, through the agency of Mr. Hugh Rose, with Mr. Higgins, then I can understand the backwardness that they have to call Mr. Hugh Rose; but that they should have any backwardness to call Mr. Hugh Rose is consistent with no supposition but the supposition of Mr. Jones's being guilty. If Mr. Jones is guilty he has no cause to complain of being placed in a situation in which he cannot, by false evidence prove that which is not true, namely, that he is innocent; if he were innocent there could be no objection to his calling Mr. Hugh Rose; and I cannot feel, on reconsideration (if I did I would avow it) that I have conducted myself with any degree of harshness towards Mr. Jones in stating that I should not call Mr. Hugh Rose—in not calling him—in leaving it to Mr. Jones to call him if he pleased, and in making these observations to you upon Mr. Jones not having called him. For I state to you distinctly that if Mr. Jones were innocent Mr. Rose must know it, and Mr. Rose could have no objection to coming forward and proving it, neither could Mr. Jones have any objection to calling him. If Mr. Rose was supposed to have no private delinquency of his own that might prevent his being examined, why did not Mr. Jones call him and put him to the test? why did he not call him into the box, and leave it to him to make the objection? that course has not been pursued by my learned friend; and, therefore, I hope, by his not pursuing it on the part of Mr. Jones, you will think me acquitted for not having pursued it on the part of the prosecution.

My learned friend tells you there is no proof in this case of any account delivered to, or signed by Mr. Jones. Why, there is no proof of an account signed by Mr. Jones; but there is proof of an account delivered to him; for Nathaniel Winter says, that understanding Mr. Jones was to call upon him to know what the amount of the profit was, he did make out an account from Mr. Higgins's book; and when Mr. Jones came to him, he presented that account in writing to him, which he believes he carried away with him. Is not that confirmation of Mr. Higgins? What had Mr. Jones to do with the profit and loss of Mr. Higgins, if he was not to divide it? Mr. Higgins's story

is, that he was to divide it, and Mr. Winter's statement that he rendered the account is the strongest confirmation of that testimony.

But my learned friend says, that we have produced these accounts, and he has looked at them, and it is true there is the profit and loss account and there is the general commissariat account, but there is no entry of this sum of 153,000*l.* odd to Mr. Higgins.

Mr. Park.—To Mr. Jones, as paid to Mr. Jones.

Mr. Attorney General.—I protest I did not understand it. It is true there is no particular account of that as paid to Mr. Jones by that name, but there is an account of it as paid to the commissary-general, directly entered, and proved by all the witnesses to have been an entry concomitant with the transaction. I hold the account in my hand. My learned friend says, there is no entry of that sum to Mr. Higgins. There must have been an entry to Mr. Higgins, and there is. There is an entry on the one side to the one, and on the other side to the other. The index will refer you to both at once:—first, it is said that there is no entry of this sum of money credited to Mr. Jones. The first item in the account is debtor the commissary-general on this side, and creditor on this side; and here is Matthew Higgins (that is) received of Matthew Higgins 153,273*l.* 17*s.* 10*d.* but they may say this is not, perhaps, the half profit; this is the gross sum entered to Matthew Higgins; but here is the account of profit and loss, where there is actually double this sum stated as the profit. Why is it debited to Matthew Higgins? Because Matthew Higgins was the person who, in the first instance, had the whole profit, and who was therefore to render a moiety of that whole profit to the commissary-general, and who does render it to him by giving him credit for it in this account. Is this fallacious? Mr. Jones is credited, and Matthew Higgins is debited. I will only look in the index for Matthew Higgins's account, which is page 45, and I find "balance due to the commissary-general 153,273*l.* 17*s.* 10*d.*" the exact sum; so that if you come to dissect the books, the more you look into them the more clear the thing is. First, I am told it is not credited to Mr. Jones; no more it is: but it is credited to the commissary-general, who is Mr. Jones, and there is the sum. Then they may say, that is not the profits, but there is under profit and loss exactly double the sum. Then it may be said it is credited to Matthew Higgins; but I turn to his account and find him debited with that sum; and therefore it is impossible for any thing to be more clear than this is rendered. And it was a dangerous thing for my learned friend to meddle with the entries in this book; for I was quite sure that to whatever article I turned, having a reference to profit and loss, it would confirm the account I had given you of this transaction.

What reason had Mr. Jones to be solicitous how the profit and loss account stood? what

had he to do with that if not to divide it? and yet you find him going to Nathaniel Winter to get it, talking with Mr. Higgins from time to time, and (what is more material) receiving in hard money into his own pocket 153,273*l.* 17*s.* 10*d.* in the way which is stated by Mr. Higgins, and not contradicted by Mr. Jones. For against the commissary-general are all the items in this charge; for the sum total, amounting to more than a million, the contractor Higgins was entitled to be paid by him; all this he charges to government, and Mr. Higgins tells you that he paid him that sum, short of the 153,000*l.* which was allowed on account of the half profit. He therefore retained that as an emolument to himself. I have stated it incorrectly: he paid Mr. Higgins so much the less of the amount that was due to him. There was due, I will suppose, more than a million; he deducted out of that the sum of 153,000*l.* which was his share of the profits; he therefore, receiving the whole from government and paying Mr. Higgins so much the less, put that money into his own pocket.

Now, gentlemen, one word upon this subject of profit, which the curiosity of my learned friends led them to inquire of from Nathaniel Winter. This bears upon the present case; but it is of infinitely greater importance with respect to the general concerns of the public. They asked Mr. Winter how his house were concerned in this transaction? why they bought on a commission for Matthew Higgins? They purchased for Matthew Higgins all that he supplied government with, and they made those purchases upon a commission of five per cent: so that he paid them what they gave for their goods and five per cent over. He stood therefore as the purchaser from them at that rate, the house contenting themselves with a profit of five per cent. His lordship asked the witness whether his house would not have rendered these same things to government upon the same terms; he boggled a little, but at last he could not say that government money was worse than other money, and he admitted that they would. Then, gentlemen, if government had been fairly dealt with, these goods would have been rendered to them at the price which Mr. Matthew Higgins gave to this house for them; that I take to be demonstrated by the evidence which has been given. Now let us see what government was at last, by this fraud, obliged to pay. The sum total in the course of about nine or ten months, is somewhat more than a million. Mr. Matthew Higgins's profits upon that expenditure are 306,000*l.* which is divided, and a moiety of it goes to the defendant, so that you see here is a profit of thirty per cent, tacked on to the fair profit that the house of Winter and company made upon the purchase; and if the defendant had governed himself by the common rules of honesty, he might, by purchasing these goods, and charging no commission himself, have rendered them to government without a single farthing of that thirty per cent added

the price. For there was no reason whatever that he should not do for government what the house of Winter and company did for Matthew Higgins. You see that house consisted of Tully Higgins, his brother, of a Mr. Rose, the brother of Hugh Rose, and of Nathaniel Winter, the brother of William Winter, the clerk of Mr. Higgins. In truth this was only a little more profit to be got from the public, for here was a profit of five per cent gained by them at the first purchase, and then of thirty per cent by Mr. Higgins which was divided with Mr. Jones. Now, supposing Mr. Jones had applied in the first instance to the house, and desired them to purchase all these provisions for him; as it is proved they did purchase them for Matthew Higgins, is there any doubt that they would have purchased the whole for government (as they did for Matthew Higgins), at five per cent? and then government would have saved, upon this expenditure of more than a million, at least thirty per cent. All this falls upon government, in consequence of Mr. Jones entering into this corrupt agreement with Mr. Higgins and with Mr. Rose.

Gentlemen, it was not necessary for the purpose of convincing you that the case was proved against Mr. Jones, that I should have gone so much at large into it in my reply; but I did think it necessary, for the satisfaction of the public, that those topics which my learned friend had very ably urged, should receive the answer they were exposed to. I should be very sorry that any man in this court should think Mr. Jones hardly dealt with in this prosecution; it is a part of my duty to show, that the guilt I impute to him, is brought home to him by the most satisfactory evidence. I know his lordship's kindness would have excused me, if I had said shortly, that the case was so clear, that it did not require a reply; but I should not have satisfied myself if I had not given these answers to the arguments of my learned friend, and pointed out again to you the enormity of the offence, of which the defendant, in concurrence with others, has been guilty.

SUMMING-UP.

Lord *Ellenborough*.—Gentlemen of the jury. This is an indictment against Valentine Jones, esquire, which comes before you for trial, under circumstances which have been particularly commented upon by both sides. It is stated, that this trial has been preceded by inflammatory accounts of the matters to which it relates, which may prejudice your minds in the discharge of your duty as jurors. I trust that those accounts (if such have been published respecting the subject of this trial) have not reached you; but I trust, still more confidently, that if they have, they will produce no effect upon your minds, but that you will confine yourselves to what ought to guide you upon the present occasion, the evidence given upon oath.

The hardship which has been complained of

on the part of the defendant cannot, I conceive, exist to any considerable degree; because if it was apprehended that it would have produced material prejudice, the court is always anxiously alive to any applications which may be made, that a trial may be deferred to a period of more indifference and impartiality: and if it had been conceived that the present was not such a period, if it had been thought likely that such representations as have been alluded to, would influence your minds, it would have been my anxious wish, sitting here either in term or out of term, that the trial should have been postponed. Assuming that there is nothing which could contaminate your minds or mine, no such application having been made, we will now address ourselves to the immediate matter of charge, and the evidence by which it is sought to be sustained.

This is an indictment against Mr. Jones, charging him with a great breach of duty in his office of commissary-general and superintendent of forage and provisions, under an appointment, or rather two appointments, which he received from his majesty in the month of September, 1795. He was appointed (by two instruments; one signed by the secretary of state, and the other by the lords of the Treasury) to the office of commissary-general, and superintendent of forage and provisions; and the emoluments he received, in respect of those offices, was for the one 2*l*. and for the other 3*l*. making an aggregate sum of 5*l*. a day.—The indictment charges, that, having an ample salary for the discharge of these offices, and it being his duty to provide the articles which might be required, in the most economical and the least expensive manner to his majesty, and not to receive to himself any share of any gains or profits made by any person employed by him, as such commissary, he, in violation of his duty, corruptly bargained and agreed with Matthew Higgins, that he, Matthew Higgins, should pay and allow to him one moiety of the profits and gains to be made by him, by means of his furnishing and supplying, under the defendant's authority as such commissary: That Matthew Higgins did, in consequence, furnish divers articles; and that, in pursuance of this bargain, the defendant unlawfully and corruptly kept and retained to his own use, out of the sum of money payable by the defendant as commissary-general to Matthew Higgins, a large sum of money, stating the amount to be 153,273*l*. 17*s*. 10*d*. of Leeward island currency, and of lawful money of Great Britain 87,179*l*. 5*s*. The question for your consideration is, whether, upon the facts stated, he was or was not guilty of this offence. That it is an offence of high magnitude, in case the facts bring it home to him, has not been questioned by the learned counsel for the defendant. A more enormous offence can hardly be conceived, than that a person in public trust shall enhance the charge to the public, by leaving the contractor only one-fourth part of the profit, taking to himself one-half, allotting

one-fourth to another person, and of course unnecessarily charging the public with three-fourths. It is, I say, an enormous offence, if it be made out; and the only question for your consideration is, whether it is made out by the evidence; which depends upon the credit you give to Higgins, confirmed as Higgins is by Nathaniel Winter, and by the circumstances of the case.

The first witness who has been called is Mr. Rose, who speaks of his having admonished and warned this gentleman, on his appointment, of what was the expectation of the public, and what was the duty of a commissary, in addition to that which every person so appointed might consider as the necessary duty of his office, namely, that when he was appointed at a fixed salary to inspect others, he was not to receive that which he was to prevent others receiving in the shape of profit. Mr. Rose, on being shown a letter, says, "That letter was sent to Mr. Jones by me; after that letter being sent, I had a personal communication with Mr. Jones before he proceeded to the West Indies. I stated to him, as I had done to others in his situation, that it was expected from him, in conformity with what was contained in the letter, that he would derive no advantage of any kind beyond the pay stipulated in his commissions, and the usual allowances, which were known and fixed allowances to persons in his situation. It was also my constant habit to communicate to all persons in his situation, and, therefore, I take for granted that I communicated to him, that a considerable advance of pay was made to him, beyond what had been in former wars, in order to insure a punctual and faithful discharge of the duty of himself and of other commissaries. The official pay from the War-office was 3*l.* a day, and 2*l.* from the Treasury, which was double what it had been in the American war, and his half-pay, which is regulated by the amount of his whole pay, would, on his quitting the service, be doubled in consequence." He says, "This additional pay was stated to all the commissaries-general that I had any intercourse with, to be in order to insure the strictest fidelity and punctuality on their parts, the lords of the Treasury being aware of the importance of securing to the public the services of respectable men, in a part of the world where it had been found so difficult to check or correct abuses. I told him that, as the reward was so considerably increased, any departure from the strict line of duty would be the more inexcusable; and that if any delinquency should be found, the utmost extent of punishment which the law could inflict, would be sought for against him." He says he certainly meant to convey to him, what certainly there could be no necessity to say, that no profit could be derived beyond the pay directly or indirectly.

A part of that letter I will read in this place. After stating what was to be the commissary-general's allowance, which was double any former allowance, and what was to be the al-

lowance to the deputy-commissaries, whom it names, it goes on to state this: "The lords of the Treasury expect that neither you nor they shall derive the smallest advantage, in any shape or mode whatever, from your situation, beyond the pay above stated, except the regular allowances of provisions, and the articles usually furnished from the departments of the quarter-master-general, and barrack-master-general." In another part it says, "It should be distinctly understood by every person in your department; that if any one shall be found to have profited in any manner directly or indirectly contrary to the strict injunctions hereby communicated to you, immediate dismission will be the consequence without a possibility of the offending party being ever afterwards employed in any public situation." Then he desires him to communicate this; and then gives other general directions, with which it is unnecessary at this time of day to trouble you. It is, in effect, the same which he had orally communicated to him, so that he must have been (if otherwise uninformed) perfectly cognizant of his duty. Even if he could have alleged any thing by way of excuse *before*, he could not *after*, receiving this letter, being here told that he was to receive nothing but his salary.

Mr. Rose, says "The defendant had been, for many years before, in the West Indies, and had filled different public situations. The manner in which he had conducted himself, had recommended him. I believed him to be a man of merit, and he was selected as such. At this time the military force in the West Indies was very large; the duties of the office were, of course, very various, and complicated, and extensive." He is asked whether he knows that the defendant wished to decline going out on account of his ill health; he says, "I do not recollect that he did wish to decline; it may be so."

Now, certainly, the circumstance of the defendant's character having been mentioned here, and being proved afterwards, we are to assume him to have been, up to the period of his appointment, a man who had merited the situation by his former conduct; and if he has committed this offence, one cannot but lament those unfortunate lapses from virtue, which we so often see produced by an overbearing temptation. He appears, according to the evidence, to have been, up to this, a man well fitted for the office in which he was placed.

A Mr. William Smith was then called to prove the defendant's hand-writing to a letter addressed to Mr. Michael Sutton, who was assistant commissary at Demerara; and that letter is material for your consideration only as it shows that this particular paragraph in the Treasury letter to him, which defined the amount of salary and allowances, and told him that that was to be in lieu of all emoluments whatever, passed under his particular notice, and was pointed out by him to the subordinate officers under him. That letter has been de-

tailed, and I do not think it necessary to repeat it. Then there was put in a letter from him to Mr. Glassford, which was written after inquiries began to be instituted in the West Indies; and it was put in to show that it was the letter of a man writing with a guilty mind. Whether it was preparing a person, likely to be examined, to give his evidence in a particular way favourable to the person writing that letter, will be for you to judge when I read the letter.

The first witness upon whom much observation has been made, is Matthew Higgins, and it is objected in *limine*, that he ought not to be received unless confirmed. I find a great difficulty in applying the law about accomplices; it obtains not to the extent which has been often extravagantly contended for in argument. But the particular crime charged upon this record, is not a crime in which Higgins could participate; for it is the crime of a particular officer—it is the crime of the commissary-general. He might be guilty of another crime for which they might be both indicted, namely, a conspiracy to defraud government of emoluments, beyond those fairly receivable from government; and, as far as he assisted the commissary, or was a party in so doing, he might be indicted for a conspiracy. I should feel a vast difficulty, even if there had been an act of parliament passed constituting this a felony, to say, that the law, as to accomplices, would apply to him. But, supposing he was to be considered as an accomplice in the strained and forced sense of the word, an accomplice is a competent witness, or why do we every day admit such evidence. An accomplice, when admitted and sworn, is unquestionably a witness on whose solitary evidence a conviction may take place. But it is the custom of courts of justice (in their humanity), wherever a witness stands under any circumstances of exception as to his testimony, to tell the jury to disbelieve it, either wholly or partially, or only to believe it as it is confirmed. I feel it the more necessary to mention that, because a misapprehension has gone forth upon this subject. No longer ago than two years, four persons, on a deliberate consideration of their case by the judges, were executed, having been convicted of burglary on the testimony of witnesses, the principal of whom was an accomplice. There was no confirmation of the main parts of the case, as it respected one of the defendants; but the accomplice was confirmed as to the main tenor of his story as it applied to the rest of the defendants; and all the judges thought that he had sufficient confirmation as to the general scope of his story. That person, in respect of whom there was no confirmation, it was deliberately recommended, should undergo the sentence of the law, and he did undergo the sentence of the law. I mention this only because it has been very much misunderstood. But, good God! gentlemen, what degree of comparison is there between the guilt of a man

who extorts from the contractor three-fourths of the profit he would receive, and that contractor who permits him to take one-fourth, and retains the rest? For that is the relative situation in which they stand, according to the evidence for the crown.

Higgins comes to relate a story, which I dare say he comes to relate unwillingly. It is certainly a story reflecting no credit upon a man, that he should have been guilty of such conduct. You observed the manner in which he gave his evidence. You will judge whether you think there was any forwardness or anxiety to convict; or whether he did not give his testimony under the compulsion of the oath he had taken, without any wish to convict. The integrity of the witnesses may be judged of from their demeanor; of that demeanor it is fitting you should judge.

Matthew Higgins says, "In 1796 I was a merchant in the West Indies. Brigadier-general Knox had the command there. I had a contract for supplying such vessels as might be wanted on the part of government. I knew Mr. Hugh Rose; he was then in the West Indies; he was acting, I understood, as deputy-paymaster. In the year 1796 I first heard that the defendant was coming out as commissary; that was whilst my contract with general Knox subsisted. I had reason to suppose, from what I had heard, that my contract would be at an end on the defendant's coming out. I therefore applied to Mr. Hugh Rose; I told him that as he was on more intimate terms with Mr. Jones than I was, that I should be very much obliged to him if he would speak to Mr. Jones not to take the contract from me." Now, there certainly is no corrupt overture on the part of Higgins; all he desires is to propitiate this person through Rose, his friend, and to desire that this contract might not be taken from him. You will see, according to this, in whose mind the first idea of a corrupt bargain arose. He says, "I saw Rose a considerable time afterwards. I went upon an expedition to Demerara; Jones had not then arrived; I returned to St. Lucie again; Jones and Rose were there, and I saw both of them, and in the communication which I had with Mr. Jones, I repeated to him a conversation that had passed between Mr. Rose and me." That conversation, on account of the subsequent communication of it to Mr. Jones, is admissible evidence: "Rose told me that he had arranged the business with Jones, or settled it for me, that I was to continue to have the contract. I said I was much obliged to him." At this moment he does not appear to have known what the terms (rather hard terms as he thought them) upon which he was to have it. He replied to me "that he was obliged to make terms with Mr. Jones; I asked him what terms; he said, that Mr. Jones must have a moiety of the emoluments arising from the contract, and that the other moiety was to be divided between him (Rose) and myself. I told him I would have nothing to do with it or him, I would not agree to it; Rose, upon

that, said, that I was very wrong, that many people were ready to take it and willing to take it." I am afraid that is too much the case, that they are willing to take it, on terms so extortionate, because if they may make their bargain with those persons who are to pass their accounts, they, of course, will make a harder bargain with government. "Rose said, that the vessels might be discharged, for Jones had commenced purchasing vessels, and that it was his intention to buy and navigatè vessels, and let them be the property of government. Rose said likewise, that sooner than I should not go on with the contract, I might keep his part of it, and retain the moiety myself. I then told him that I would go on with it, and that I would not accept his quarter." So that Mr. Higgins is now persuaded to take it upon the terms proposed. "He said that for the loss I should sustain in giving up so much of the contract, it would be made up to me in the supplies; that whatever supplies might be wanted for the use of the government, I should be applied to to furnish them. This conversation took place with Mr. Rose on ship-board, on the quarter deck. He said, that the profits arising from these supplies were to be divided in the same manner with the profits arising out of the vessel contract. Mr. Rose told me Mr. Jones was in the cabin, and desired me to go down, which I did, for the purpose of mentioning my acquiescence. I went down to Mr. Jones, and I repeated the conversation that had passed between Mr. Rose and myself, as far as regarded the terms of the agreement and my acquiescence." Mr. Jones assented, rather, he says, by the inclination of the head than by any particular words, that he recollects. "After this, I went on with the vessel contract, and with the supply of stores, to a very considerable amount, for nine or ten months."

Then being shown a book he says, "It is not my hand-writing, but it was kept with my knowledge." Mr. Winter, who appeared to be the brother of Nathaniel Winter, who was called, wrote the book; but he was called to prove a specific communication upon the subject of this book, and of items contained in it with the defendant; so that, except for the terms of the original bargain, this evidence is less material; for if you believe that an account was shown, in which a moiety of profits was to be retained by the defendant out of the gross profits, Mr. Higgins's evidence is comparatively insignificant. If you believe this person, on whom no disqualifying imputation rests, he says, "These entries were made while the book was in the West Indies." On the first page here is debtor commissary-general, creditor, Matthew Higgins; and here is an entry by Matthew Higgins 153,273*l.* 17*s.* 10*d.*; the word *by* would import, that it was so much paid by Matthew Higgins. By reference to another part of the account, which is contained in this book under the head of profit and loss, there appears to be balance in favour of profit and loss 206,547*l.* 15*s.* 8*d.* Now, the 206,547*l.* 15*s.* 8*d.*

is just twice that 153,273*l.* 17*s.* 10*d.*; therefore, this item is a moiety carried to account in the way this witness explains it; this is the total profit and loss arising upon the whole of his supplies for those ten months; this refers to the account which he states was kept, and that he settled the profit and loss with the commissary on the ground of that account, which makes it exactly the sum I have stated. He says, "I left the West Indies in the latter end of April, or beginning of May, 1807. There was a settlement of accounts with Mr. Jones a little before I left the West Indies from this book; that must have been on the 31st of March, 1807. The settlement was on the footing of the profit and loss account. I personally saw Mr. Jones, and stated to Mr. Jones what was the amount of the profit that was due to him," which is the amount, as it appears in the book. "I stated that to him personally, and after I had told him that, he admitted that he owed me 94,168*l.* 13*s.* currency more than his share of the profits was." That is the amount put down as due to Hugh Rose, and this is what he swears to, and which verifies the allegation in the indictment. "Mr. Jones, in settling finally with me, retained that sum, namely, 153,273*l.* 17*s.* 10*d.*, and paid me so much short." If, therefore, the commissary paid the contractor that sum short, he retained it in his hands, and that verifies the indictment that he did so retain that sum. He says, "There were some things not comprised in this settlement. There was one which went under the name of the American adventure. I considered that as a private adventure, and that I was not bound to render an account of it to Mr. Jones, that it was optional with me whether I rendered it or not. I afterwards did make him this allowance, and I directed Mr. Nathaniel Winter to make out an account of that adventure." Now, gentlemen, whether he was bound to render it under the agreement or not, is not material. There had been, according to him, an agreement, which would comprehend all profits made in the course of supplies, and, according to the evidence of Matthew Winter, the profit of the American adventure consisted, in part, of the discount of bills, and in part, of supplies of flour, meat, and so on. If Mr. Higgins was right in supposing it did not come within the scope of his contract with Mr. Jones, yet if he paid it upon that ground, and the other received it upon that ground, it shows both to be acting upon the footing of a supposed agreement; and he says, "I afterwards did, in fact, make him that allowance, and requested Nathaniel Winter to pay to Mr. Jones eight hundred and odd pounds, and that was paid on account of the American adventure. I do not know that that included any thing relating to the contracts." Then he says, "Mr. Jones had not applied to me directly about it; Mr. Jones had no claim whatever upon me, except in virtue of the agreement entered into on board the ship." So that, under the supposed, or the real effect of this agreement, he pays another sum, added to this 153,273*l.* 17*s.* 10*d.*,

of eight hundred and odd pounds. The only material circumstance, in reference to that, is this receipt signed by him; that is a collateral circumstance in favour of the witnesses, and is a thing incapable of telling an untruth; for that is an acknowledgment of that sum being received by him on behalf of Higgins. If this did not spring out of that, but belonged to some perfectly distinct transaction, and there were accounts of any other nature than what arose out of a corrupt bargain, it was competent to Mr. Jones to show it; may it was proper for him to show any one to which it might be referable. If it be true that this was connected with any thing else, or it was not true that it originated out of this agreement, it might be expected, and would be expected by you, that proof would be given on the other side. In the absence of that proof, it is very strong confirmatory evidence in aid of the evidence of Higgins, and of Nathaniel Winter. He says, "There was no other account on which the 153,000*l.* or the 800*l.* could be paid to Mr. Jones except the agreement."

Then, on his cross-examination, he says, "I had been for some years a merchant in the West Indies before Mr. Jones arrived there as commissary-general. My house of business was in Demerara, under the firm of Mackalmut and company; Mackalmut and I were the partners in the house; I had the contract for supplying vessels under general Knox, before the appointment of Mr. Jones. Rose, the deputy paymaster-general, had a moiety of the profits of that contract. I had an acquaintance with Mr. Jones before I saw him on board the ship. The application to be made to Mr. Jones arose on my part, not to take away my contract; nobody was present at the first conversation between Mr. Rose and me, nor was any other person present at the conversation between Mr. Jones and me in the cabin."

Now, if it be said that, as no person was present but Mr. Rose and him at this conversation, his evidence ought to have been supported by the evidence of Mr. Rose on the part of the prosecution, I own I do not feel that it was in any manner (not only on account of the reasons assigned, but on general principles of prudence) at all to be expected, on the part of the attorney-general, that he should call Mr. Rose. He, seeing that his evidence had a tendency to criminate himself, might at once have exempted himself from examination. But supposing him to have been willing to forego the objection, in order to lend a willing testimony to Mr. Jones, was he the sort of witness whom, in his discretion, a prosecutor would be disposed to call? But if, upon the part of the defendant, it is objected that he is pressed by the solitary testimony of Higgins, it is stated in court, and I presume is true, that the man was here ready to be examined. If he could tell the truth, and that truth would exculpate Mr. Jones, every motive of self-preservation, and of attention to his own interest, most imperiously required him to have called him

without stating what he would have said if he had been called. The case on the part of the prosecution is, therefore, relieved from all blame on account of the solitariness of Mr. Higgins; inasmuch as there was a person who could have disproved his statement, if the truth would have allowed him. That person is not called.

He says, "Besides having the contract for vessels continued, I was also to furnish the supplies." Which he enumerates. "The bills of parcels were in general delivered by me to Mr. Jones. I delivered these sometimes in the name of the real seller, and sometimes in fictitious names, that is, of persons who were not the sellers. The market price was to be certified by persons on the spot; in some instances, I think that I directed Winter, the clerk, to apply for the certificate, but in general, he applied without my expressing the desire. I do not recollect that the books were produced to Mr. Jones by me; I think he saw them once in the office, but I do not think he came there for the purpose of examining them. If he looked at any thing, I think it was his account as commissary-general; there was a constant running account between me and the commissary-general: he was debited by me for the supplies, and I was credited for the payments." Upon being shown a paper, he says, "I think that is my hand-writing." It was suggested that Mr. Jones might be in bed when he saw him in the cabin; he says, "No; he was writing when I went down. Upon my mentioning the agreement, as far as my memory goes, Mr. Jones made no reply, but rather nodded assent. I left the West Indies in May, 1797; a settlement of accounts took place between Mr. Jones and me before I left the West Indies; I think I took to him a paper, containing an account of the profit and loss, for explanation: that was eight or ten days before we settled, and afterwards we settled accordingly; it is impossible to speak positively at this distance of time."

Upon his re-examination, he says, "The account before me is the running account I allude to, and which, I think, Mr. Jones once saw; the sum of 153,273*l.* 17*s.* 10*d.* was struck off as short paid to me by the commissary. If I had had no agreement with Mr. Jones I should have had to receive just 153,273*l.* 17*s.* 10*d.* currency, more than I had if he had paid me the amount of the commissary-general's account; I should have had to receive 153,273*l.* 17*s.* 10*d.* more than I did, but which he retained, and I received so much the less."

I put a question to him in the close of his examination, in answer to which he says, "We settled on the footing of the agreement made through Mr. Rose on the deck, and with Mr. Jones in the cabin. I have no doubt that I so stated to him what had passed with Rose, that it must have been perfectly understood."

The next witness called, is Mr. Nathaniel Winter, and he says, "he was in the West Indies at the time these several parties were



there." He is shown the book which was kept by his brother, and he says, "Mr. Higgins requested I would look at these books to see what his profits were." For some reason or other, Mr. Higgins wished that he should cast them up, and not employ his usual clerk, who was his brother. "After this, Mr. Jones called upon me, I think, just before Mr. Higgins came to this country, and I gave him, by desire of Mr. Higgins, a statement of the profits from this book; Mr. Higgins desired me to look at it, and if Mr. Jones called, to give him an account of it." So that if Mr. Jones called, he was to give him this account at the instance of Mr. Higgins. This is very strong confirmation of Mr. Higgins's statement. "Mr. Jones did afterwards call, and I gave him an account in writing of the profits on the different accounts in the book; I do not know whether Mr. Jones took it away or not, but I produced it." The most natural thing is, that, being produced to a person, and not seen afterwards, he took it away; every presumption, to be sure, is, that he did so; however, it was produced and read by him, and he saw the total amount to be 306,547*l.* 15*s.* 8*d.* And the divided moiety short paid to the contractor, on account of the retention of that sum by the commissary to be 153,273*l.* 17*s.* 10*d.* "If that paper was left with me, it is lost; I think if he had not taken it, I must have seen it since. It was not made out for the use of Mr. Higgins, but for the use of Mr. Jones merely, and to be taken away by him; whether it was so taken, I cannot say. In 1800, I made out the account of the American adventure, by Mr. Higgins's desire, in order to ascertain what the profit upon it was; I made it out according to the papers which were produced to me." It is no matter whether it was correctly made out; it is only material to show that there was something paid by Mr. Higgins, who said he could claim nothing except on the footing of the agreement, as there was no other transaction subsisting between them. He says, "The subject of the adventure was flour, beef, and pork, delivered to Mr. Higgins, and by him applied in the discharge of his contract. This paper, marked A (which is a receipt), I received from the bankers on making this payment." It is proved to be the hand-writing of Mr. Jones; this is a copy of it:—"Received February 25th, 1800, of Matthew Higgins, esq. by the hands of Nathaniel Winter, esq. 829*l.* 5*s.* 8*d.* in full of accounts between said Matthew Higgins and Valentine Jones. (Signed) Valentine Jones." It does not appear that there was any transaction, from the beginning of the world to this hour, but upon the footing of this agreement; if there was, Mr. Jones might have explained it; but not being explained, it is a very strong confirmation of the account given by Mr. Higgins and Mr. Winter. He says, "I never saw Mr. Jones upon the subject of the account to which that receipt relates;" but a man who signs a receipt for 829*l.* must, of course, be presumed

to have known for what he received it. "Our house purchased goods which we supplied to Matthew Higgins to apply to his contracts, and we had a commission on them. I never inserted false names of sellers of goods in the goods I sold to Mr. Higgins, but I have applied to have false names put into the account which Mr. Higgins was to render to Mr. Jones." It is certainly blamable in any person to put a false name. Unfortunately one has had occasion to see, that in disguising public accounts, and in order that it may appear that they have gone through many hands, or to warrant an increase of profits, or to prevent a discovery of the overcharge, false names have been used; in this case they were used. It does not appear that Mr. Jones was privy to this transaction, so as to render him an accomplice in it. He says, "This was at Mr. Higgins's request; he requested they might be made out in other names." He had some reason why he did not wish to appear the seller. He says, "When I delivered to Mr. Jones the statement of the profit and loss account, nobody was present but us two. I am now living in Fitzroy-street; Mr. Higgins resides in Ireland; I believe he carries on no business. I have done business for him in England as his agent. As to the American adventure, bills of exchange formed one item of that on the debit side." Being asked as to his knowledge of the American account, he says, "My knowledge was from the books; I came into possession of Matthew Higgins's books by his desire, that I might examine the account of profit and loss made up by my brother. I did not remain in the West Indies above two months after I had rendered the account to Mr. Jones." Then he says, "To the best of my memory, an account from this book was rendered to Mr. Jones." Being asked as to that expression, "to the best of his memory," he says, "I have not the least doubt about the fact. This is the ledger; the last time I saw the journal, it was in the possession of some of the auditors of accounts in England. I delivered back both the books to Mr. Higgins, either the day I received them from him or the next day. If Mr. Jones did not take away with him the paper I made out, I should have probably delivered it back with the books to Mr. Higgins. If I was obliged to say one way or the other, I should say he took it." To be sure the probability is that he had it.

Upon his re-examination, he says, "There was no book from which I made out the account of the American adventure: I made it up from some papers in England; but," says he, "I know of my own knowledge, of cargoes of flour and provisions coming from America from time to time; Mr. Higgins had no house in America, they came from the house of Bennett and Carey, to a considerable amount; I know of no use that he made of such articles but the supply of the commissariat, except some sent after the supply of the commissariat was over. Mr. Higgins used to render accounts

of provisions to the commissary, which he furnished himself, as if they had been furnished by others. Our house purchased a great quantity of provisions for Mr. Higgins; we had a commission of five per cent upon the supplies; I would have done it for government at five per cent." That, to be sure, does lay too much foundation for the observation of the attorney-general, that all beyond this five per cent was corrupt profit taken by these persons so dealing in the execution of their public trust. At least the one-fourth, ultra the five per cent, which rested with the contractor, would have been sufficient, and the other three-fourths, which were absorbed by the commissary and his friend Mr. Hugh Rose, might have been saved, if you believe this corrupt transaction did take place. "If I had been employed, all beyond five per cent might have been saved."

The receipt which I have stated to you was then read, and the evidence closed with a letter written by Mr. Jones, dated the 3rd of December, 1802, from Bath, to Mr. Glassford, then acting commissary-general in Barbadoes. It is written after some inquiries had been instituted into the conduct of himself and others in the West Indies, and it is for you to say, as far as this is material, whether it does not betray an anxious feeling, and at the end a very distrustful mind, on the subject of the inquiries then going on in the West Indies. He says, "Dear Sir:—The commissioners having sailed three weeks since, will, of course, arrive long before this letter, although in a merchant ship; but unless their secretary, who went before, has applied to you on any matter concerning my accounts, I think you will have time enough to make out any thing that may be necessary before the commission proceeds upon much business." "Make out any thing"—Is not this suggesting something like preparation as to the answers he was to give, for fear of being taken by surprise? Is that the way in which a person whose accounts will bear examination and inquiry is likely to conduct himself? "I do not, indeed, imagine that any thing material can be expected of you relative to my business of my cash expenditure, of which I made up all the vouchers, on my departure, now in their possession; but as the provision and store accounts came in a different degree under your inspection, you may be of service to them in clearing up any question of doubt or misconception. However, I should very much wish that, in such cases, you would be very circumspect, and not give any answer relating to me on my general business without the requisite time for reflection;" that is right enough; "and recollection, as I am well assured of the subsequent concern it would give you to be betrayed, by designing queries, into a hasty or incautious statement of any facts which more deliberate information would put in a different view. As I have never known what entries you have made in any of your accounts sent home, for which credit was to pass to me on

those matters which you settled after I left you, I could wish you to state them to the commissioners, such as the receipt of sales at St. Pierre."

Then he says, "With respect to my provision accounts generally, I have no doubt but many questions will be put to you; but, for heaven's sake, don't be un-modelling them again;" he has put his accounts together, and does not wish them to be disturbed; "as they cost me more pains and trouble than I ever had in my life." What difficulty there could be in modelling accounts of provisions bought and sold, and which must be made from day to day, one cannot conceive, if they were fairly executed: if they had been managed in any way, it might be a subject of difficulty to put them together again, if once taken to pieces, "they would desire no better than to perplex me more—if you can make them better, or you can supply any deficiencies that I may seem to have made, I shall be obliged, but do not make any observations on my general abstract being of a different form from any state of yours; nor would I wish it to be known that I had written to you about it; not that I should fear fair and candid investigation, and I trust you are as well as myself conscious that our proceedings had not the evil intention our judges believe, but I have already seen too much ill-will on this side the water, not to suspect foul play on the other. On the whole"—Now, this is certainly improper, for it is in a manner preparing a witness for the inquiries to be made of him. "On the whole, you have one general answer in your power, which is, that you cannot remember points of business so long gone by." The rest of the letter is not, I think, very material for your observation; if the learned counsel think there is any thing further in it, I will bring it under your consideration. Certainly that letter is subject to various interpretations—certainly a man when subject to inquiry, might very properly wish that the attention of a witness should be called to the subject—but to suggest that he must have a difficulty in answering to matters so long gone by, is like suggesting a sort of general denial of knowledge whether he could make it truly or not.

The question, gentlemen, for your consideration is, whether this defendant was guilty of a corrupt participation of profit with his contractor; for the learned counsel has very properly not made any question upon the law; it would not bear one. If a commissary colludes with his contractor in an agreement, that he shall have one-half of the profit, and that another quarter shall be dealt to another person, that is certainly an offence. The question is a question of fact, upon which you will decide. You have the witness Higgins coming forward, as it seems to me, unwillingly, waiting to have every fact almost extracted from him by particular inquiry, stating facts which he can have no interest to reveal, which certainly place him in a discreditable situation, though less discre-

ditable than the commissary's. They place him certainly in a disadvantageous situation. He states to you facts, which are confirmed by the evidence of this Mr. Winter, who says, that he made out, by his orders, an account which he delivered to the defendant, containing the gross amount of profit and loss. If there had been no dealing between them, what reason had he to inquire what was the profit and loss of the contractor? or would the contractor be desirous of exhibiting the profit and loss to a man who was not to have participation? But he swears that he exhibited an account in which a moiety is carried to account in the manner Mr. Higgins represents it to be. If it be said only one witness out of two was called, who might have proved this corrupt agreement, it should at the same time be recollected, that it was in the power of the adverse party to have called the other, for it is admitted that he is here. Then there is an account afterwards cast up, of the different items of the American adventure, which, Mr. Higgins says, he allowed him to have, though he did not consider it as coming within the scope of his agreement. It was, however, allowed by him, and there is 800*l.* proved to have been received by the defendant.

If he could have shown that these payments were made on any other account, or that there was any other account on which they could have been made, that might have thrown a little doubt upon the case of the Crown; but it is wholly unmet, except by the evidence of general Abercrombie, general Cuyler, Mr. Thompson, Mr. Jourdan, Mr. Moore, and Mr. Jones, all of whom state him to have had, at the period when they knew him, a general good character for honesty and integrity, and to have been in the highest estimation at that period. If it was so (and we cannot doubt it) one can only lament that a man who had acted so honestly and fairly, and whose conduct had been so correct, should have been drawn aside from the path of rectitude by any inducements of interest. It is for you to say, whether you believe the evidence on the part of the prosecution; the evidence of Mr. Higgins and Mr. Winter, confirmed by the circumstances which I have commented upon. If you do believe them, the defendant undoubtedly is guilty of the crime imputed to him by this indictment.

The Jury immediately found the defendant GUILTY.

684. Trial of JOHN LAMBERT and JAMES PERRY, for a Libel upon his Majesty George the Third; tried before the Right Hon. Edward Lord Ellenborough by a Special Jury of the County of Middlesex, Saturday, February 24: 50 GEO. III. A. D. 1810.\*

*The following were the names of the Jurors sworn.*

William Lewis, esq.	Henry Woodgate, esq.
Charles Jones, esq.	TALESMEN.
James Heath, esq.	Mr. John Horseman.
Thomas Jeffries, esq.	Mr. John Brown.
Thomas Wright, esq.	Mr. Thomas Swift.
George Parkinson, esq.	Mr. Isaac Ayres.
John Irwin, esq.	

*Counsel for the Crown.*

*Attorney General* [Sir Vicary Gibbs, afterwards Lord Chief Justice of the Common Pleas];

*Mr. Garrow* [afterwards a Baron of the Exchequer];

*Mr. Richardson* [afterwards a Judge of the Court of Common Pleas].

*Solicitors*—Messrs. Litchfield.

*Solicitor for the Defendants*—Mr. Lowten.

*Mr. Richardson*.—This is an information, filed by his majesty's attorney-general, against John Lambert, printer of the "Morning Chro-

nicle," and James Perry the proprietor, for a libel on his majesty's person and government: and to which the defendants have pleaded Not Guilty, upon which issue is joined.

The Information was as follows:

INFORMATION.

*Michaelmas Term, 50th Geo. 3rd.*

*Middlesex.* BE it remembered, that Sir Vicary Gibbs, kn<sup>t</sup>. attorney-general of our present sovereign lord the king, who for our said lord the king, in this behalf prosecuteth in his proper person, cometh here into the court of our said lord the king before the king himself, at Westminster, on Monday next after the morrow of All Souls in this same Term, and, for our said lord the king, giveth the Court here to understand and be informed, that John Lambert, late of the parish of St. Paul, Covent Garden, in the county of Middlesex, printer, and James Perry, late of the same place, gent. being seditious, malicious, and ill-disposed persons, and being greatly disaffected to our said present sovereign lord, George the third, by the grace of God, of the United kingdom of Great Britain and Ire-

\* 2 Camp, 398, s. 6.

land, king, defender of the faith, and to his administration of the government of this kingdom, and most unlawfully, wickedly and maliciously, devising, designing and intending, as much as in them lay, to bring our said lord the king and his administration of the government of this kingdom, and the persons employed by him in the administration of the government of this kingdom into great and public hatred and contempt among all his liege subjects, and to alienate and withdraw from our said lord the king the cordial love and affection, true and due obedience, fidelity, and allegiance of the subjects of our said lord the king, on the 2nd day of October, in the 49th year of the reign of our said present sovereign lord the king, at the parish of St. Paul, Covent Garden, in the county of Middlesex, did unlawfully, seditiously, and maliciously, print and publish, and cause and procure to be printed and published, a certain scandalous, malicious, and seditious libel of and concerning our said lord the king and his administration of the government of this kingdom; to the tenor and effect following, that is to say: "What a crowd of blessings rush upon one's mind, that might be bestowed upon the country in the event of a total change of system! Of all monarchs, indeed, since the Revolution, the successor of George the third (meaning our said present sovereign lord the king) will have the finest opportunity of becoming nobly popular." To the great scandal, &c. &c.

*Mr. Attorney General.*—Gentlemen of the Jury; I have felt it my duty to bring this information against Mr. Lambert, the printer, and Mr. Perry, the sole proprietor of the "Morning Chronicle," for a libel on his majesty's person and government, which appeared in the shape of a paragraph in that paper, on Monday, the second day of October last. It is not unusual to treat all efforts to check publications of this kind, as direct attempts to encroach upon the liberty of the press, and to check the course of free discussion; I, therefore, beg leave to say a few words upon the subject. A free, fair, and full inquiry into the measures of ministers, and into the conduct of public men in the administration of public affairs, I consider to be not only lawful, but useful; and I assure you that no endeavour shall ever be made by me to curtail it. Such an attempt upon my part, or on the part of any person holding my situation, would be highly improper, dangerous, and unjust.—The constitution itself—the liberty of the subject, and many of the best privileges which were originally obtained by our ancestors, we owe to the freedom of the press; and to the free exercise of that right we are indebted for the preservation of them to this day, and, I trust, will be indebted for the preservation of them to the latest posterity. It is not for any discussion of or animadversion upon the measures of government, that the present information is brought. I admit that a free discussion of such subjects, and generally of all fair subjects, should be allowed;

and even though, in the exercise of this right, a person should allow himself to be carried beyond the bounds of discretion, I should be reluctant to bring such a case under the cognizance of a jury. Those who know my practice will do me the justice to say, that I never took advantage of any case of this kind, where it could be supposed to have proceeded only from indiscretion or inadvertency. I am perfectly ready to say, that the discussion of public affairs, the arraignment of ministers, the examination and censure of their measures, and the free discussion of all topics connected with the administration of public affairs, or of matters interesting to the country or to mankind, are not only allowable, but ought to be held sacred: and I repeat it, that if in such discussions the writers should, in their warmth, be carried even beyond the bounds of just decorum, I should be very loath to bring such cases into question; and accordingly I have never brought any such case into a court of justice. I admit the liberty of discussing such subjects with fairness, and I think such liberty is perfectly consistent with decency and propriety. But as, on the one hand, there should be a full and free discussion of every public measure, if conducted with decency, and confined within proper bounds; so, on the other, it is necessary that decorum should not be entirely violated; that due regard to the relations between the sovereign and his people should be observed; and, above all things, it is essential that it should not be in the power of any man to tell the public that there are blessings which they might enjoy, but which are withheld from them by their sovereign, and to the possession of which they cannot look forward till the accession of the successor of him who now fills the throne. No body who sees such language held, can doubt that it must have a manifest tendency to alienate and destroy the affections of the people towards their sovereign, and to break down that link of love which ought to connect the sovereign and his people in the tenderest ties. That such is the tendency of the publication in question, no person who reads it can deny.

The publication is extremely short, and you can hardly miss the sense of it at a single reading. It is in these words—"What a crowd of blessings rush on one's mind that might be bestowed upon the country in the event of a total change of system." So far the publication is political, and, therefore, though I cannot agree with the defendants in their idea of the benefits to be derived from a total change of system, I do not feel myself entitled, consistently with what I have already stated as to the right of free discussion on all political subjects, to quarrel with them for their opinion. It may be honestly their opinion that a total change of system would bestow a crowd of blessings on the country, though it is not mine; for I am to understand by a change of system, a change of plan merely, and a change of ministers—and though I do not think of ministers as it appears

they think of them, yet, according to the just latitude of discussion which the press ought to enjoy, I cannot quarrel with them for this branch of the record. The paper, however, then proceeds thus:—"of all monarchs, indeed, since the Revolution, the successor of George the third will have the finest opportunity of becoming nobly popular." In other words—No prospect of the attainment of these blessings which thus rush on one's mind, opens to us during the reign of our present sovereign; they can only be looked for on the accession of the successor to his throne; his present majesty and his life are the barriers which stand between his people and the attainment of the blessings alluded to—thus fixing the era for the enjoyment of these blessings to be the death of his present majesty.

If the defendants had contented themselves with saying, that a crowd of blessings would be bestowed upon the country by a change of system, it would have been a mere political opinion which any man has a right to maintain; but when they say, that this is only to be expected at the demise of his present majesty, it becomes personal and dangerous. It stirs up and influences the minds of the people against the king's person, and is, in other words (joining the two parts of the sentence together), neither more nor less than this, that a total change of system would bestow a crowd of blessings on the country; but this is not to be expected, except by the removal of his present majesty. I am sure I have uttered more words than are necessary to convince you, that this is a direct libel on the person of the king. You have only to read the passage to be convinced of it.

Mr. *Garrow* then rose, on the part of the prosecution, to prove the printing and publishing of the paper in question.

Mr. *Perry*, one of the defendants, addressed the Court, and begged leave to say, that if it was the intention of the learned counsel to prove the publication, he would, with his lordship's permission, save the valuable time of the Court. As it had ever been the rule of the defendants to hold out an unequivocal responsibility for the conduct of the paper, he desired to be understood to admit, that Mr. John Lambert was the printer of "The Morning Chronicle," that he himself was the proprietor, and that the paragraph stated in the record did appear in the Morning Chronicle of Monday, the 2nd of October last.

Lord *Ellenborough* said, that it was perfectly allowable for Mr. *Perry* to make this admission for himself; but was he also empowered to make it for the other defendant?

Mr. *Perry* said, that the other defendant stood at his side.

Mr. *Lambert* begged leave to declare, that he admitted the fact charged in the record, that he was the printer of "The Morning Chronicle."

The publication was therefore admitted to be proved.

Mr. *Attorney General* then desired, that the paragraph in "The Morning Chronicle" of the 2nd October last, as set forth in the record, might be read. It was read, and is as follows:

"What a crowd of blessings rush upon one's mind, that might be bestowed upon the country, in the event of a total change of system! Of all monarchs, indeed, since the Revolution, the successor of George the Third will have the finest opportunity of becoming nobly popular."

Here Mr. *Attorney General* said he closed his case.

Mr. *Perry* then stated, that there were some other passages in the same paper bearing upon the record, and tending to explain the meaning of the defendants in its publication, that he presumed he had a right to have read either now or in the course of his defence. And he respectfully applied to the Court to know whether he were so entitled.

Lord *Ellenborough* said, that, undoubtedly, if there were any other parts of the same paper upon the same topic, and appertaining to it, the defendants had a right to their being read; but certainly he could not admit that passages and paragraphs totally foreign to the subject of the record should be read, or could be in any way made applicable to their defence. If there were passages of the same paper, clearly and manifestly tending to show the intention and mind of the defendants as to this specific paragraph, Mr. *Perry* had a right to have them read either now or in the course of his defence, as he might think the one course or the other most advantageous to his argument.

Mr. *Perry* respectfully thanked the Court, and said he would take occasion to refer to the passages in the course of what he should have to offer in justification of his friend Mr. *Lambert* and himself.

#### DEFENCE.

Mr. *Perry*.—My Lord, and Gentlemen of the Jury;—In presenting myself personally to you this day, I am moved by various considerations; some of them growing out of the nature of the cause itself, and peculiar to it; some of them of a more general nature, but bearing with a heavy weight on my own feelings. I am sure that if I could faithfully describe the motives of both kinds that press upon me to this unusual course, they would be duly appreciated by the noble and learned lord on the bench, and by yourselves. By the very nature of this cause, and by the line of argument and inference which I anticipated in my own mind that his majesty's attorney-general would take, I felt a degree of delicacy and embarrassment in requesting the assistance of the honourable and learned gentleman who holds a retainer for me, and who, by his place within the bar of this

court, would have had the conduct of our defence. I am confident that in the just and manly spirit of the British bar, the learned gentleman would have flung aside every feeling but that of his professional duty—and I am sure, also, that in the estimation of every fair and honourable mind, he would have been able to exert the full vigour of his splendid talents, with a perfect and consistent regard to the discharge of his political duties.

Of this truth, that no personal considerations are ever suffered to interfere with the professional exertions of the learned gentlemen of this bar, I am in the sincerity of my heart convinced, and I have always admired the just eulogium that was passed upon them by a great and illustrious lawyer who was once their ornament, and is still, thank God! their model—I mean lord Erskine, who, when Mr. Stockdale, a perfect stranger, and a person adverse to him in political opinions, applied for his assistance in a cause in which he had given offence to Mr. Erskine's own political friends, the eloquent advocate expressed himself in the following words:—

“From a trust apparently so delicate and singular, vanity is but too apt to whisper an application to some fancied merit of one's own; but it is proper, for the honour of the English bar, that the world should know such things happen to all of us daily and of course.

“Happy, indeed, is it for this country, that whatever interested divisions may characterise other places, of which I may have occasion to speak to-day, however the councils of the highest departments of the state may be occasionally distracted by personal considerations, they never enter these walls to disturb the administration of justice: whatever may be our public principles, or the private habits of our lives, they never cast even a shade across the path of our professional duties.

“If this be the characteristic even of the bar of an English court of justice, what sacred impartiality may not every man expect from its jurors and its bench!?”

Such was the just and noble eulogium of that distinguished orator, who was in himself a shining example of the impartiality he ascribed to all. I subscribe to every word of it; and it does not belong to the learned profession only, but is to be found in the heart and practice of every one of the liberal professions of England. I may be permitted to state a most honourable instance of the same feeling, which I had from the lips of an immortal hero, who, by the most affectionate testimonies of his regard down almost to the last hour of his glorious life, did me the honour to call me his friend. When lord Nelson received from the first lord of the Admiralty, his last commission “to conquer, burn, sink and destroy,” the fleets of our enemy, which he executed to the letter, the book of the captains of the British fleet was put into his hands by the board to choose his officers. It was a

proper deference on their part. It was nobly answered upon his. He returned the book unopened, and told them to choose whom they pleased; for, “though there might be distinctions as to experience and endowments, since in the order of Providence we were not all made alike; yet, in point of gallantry, of promptitude, of zeal, and of self-devotion, there was not a captain of the British fleet with whom he would not cheerfully sail, and in whom he would not safely confide, not only his own honour, but the glory of his sovereign and the security of the state.”

If, therefore, I had thought myself justified in a cause, in which the record charges the other defendant and myself with an attempt to bring the sacred person of the king into disrepute, to apply to my counsel in the particular situation in which he stands,\* I am confident that the learned gentleman, and my other most able and esteemed counsel,† would have ardently, honestly, and much more successfully than, I fear, I shall be able to do for myself, have defended Mr. Lambert and me this day. But I felt that I could not with propriety make the application; and neither the rules of this court, nor the rules of honour, which have always actuated my conduct, would permit me to overlook my engagement; and the respect which I bear for the honour, the talents, and the integrity of this Bar, will ever prevent me from going to other courts to look for assistance here.

But, gentlemen, I should not have ventured to present myself to your attention if there had been any thing in the cause of an intricate or of a complicated nature—if there had been any innuendoes to be disputed—any special pleading to be encountered—any question of law to be argued—any witnesses to be cross-questioned—or, indeed, any thing but a plain, naked, simple proposition, which it is only necessary for me to show you, was innocently published. I am not come here with the impertinent design of attempting to make a speech, in which I should only succeed in displaying my presumption and my folly—in which I should only more surely incur, because I should more richly deserve, the ridicule to which the man who pleads his own cause is always subject—and which, I assure you, I have myself suffered in no ordinary degree, even in the streets, from my friends and from strangers, since my determination was known; and which, in some instances would have affected my spirits, if any thing could have shaken the steady purpose of my mind, when supported by the conscious rectitude of my heart. But there is nothing that I mean to try so little as to captivate your understandings by the affectation of eloquence; that would, even if I had the gift or the practice of speaking, be out of place; since nothing can be more unseemly than for a person

\* Mr. Jekyll, Solicitor-General to H. R. H., the Prince of Wales, afterwards king George the Fourth.

† Mr. Raine.

ters, and as to my wish for a change of system—not as to my idea of the blessings that would flow from it. It may be my opinion, though it is not his—but that which he complains of is, the time that I hold out to the country as the only period when they may hope to enjoy the blessings that would flow from such a change—and he says that I mean to insinuate that no such hope can be entertained during the life of his present majesty—but that I proceed to state it may be expected from the successor of George 3rd. Having conjured up this phantom of an insinuation, he very properly dresses it in the garb of terror, to affright your loyalty, and to impress upon your minds the most horrible images of civil discord—of the links of love that bind the sovereign to the people, and the people to the sovereign, being broken—and that the country is to be condemned to anarchy, because the king's life is set up between them and their hopes of happiness! All this is dreadful; but where does the learned gentleman find all this? Not in the record, for there is not an innuendo to that effect. It is really hard upon Mr. Lambert and myself that the attorney-general should acquit us of what he finds upon his own record, and then charge us with an insinuation that is not to be found there; and here I feel my insufficiency, for I do not know whether this be consistent with the established practice of this court, and consistent with law—I am sure it is not to be reconciled with reason, and therefore I should think it is not law, which is said to be the perfection of reason.—Surely the criminal inference ought to be in the record, that I might come into court prepared. When I said that there was not an innuendo to be disputed, I did not find an innuendo in the record of the nature now alleged by the learned gentleman. Whence does he draw the inference that he now puts upon the phrase? Not from the simple words, for they contain no such meaning—and not from the context, as I shall have the honour to show you when I call your attention to the passages in the same paper, which the noble and learned lord permits me to call for, and put in, as part of my defence.

But first, gentlemen, give me leave to call back your recollection to the period of time, and to the very curious and interesting circumstances at the time of this publication. It was immediately after the failure of our most notable and most calamitous expedition to Walcheren, when almost every family in this kingdom were covered with sorrow at the woeful certainty of the loss of a husband, a son, a brother, or a friend, or with the still more agonizing apprehensions of the loss which they dreaded every post would bring them—Not losses from the fate of battle, where death, even to those that are nearest in blood to the sufferer, brings with it the consolation of the glory that shines over the grave, but losses from the most cruel neglect of the means by which they might have been avoided. It was when

the ruinous distraction of the king's cabinet had broken out, after private cabal, into the scandal of public duelling—It was on the total disorganization of the king's government, when humbled and mortified into a just but temporary sense of their own incapacity, they had made a proposition to two great and illustrious statesmen to support their tottering frame. Gentlemen, this paragraph made its appearance on the very day when the first faithful narrative of that overture to a negotiation was communicated to the public through the medium of the *Morning Chronicle*.

You will of course bring back your recollection to that day, and to the state of the cabinet on that day. Was there at that time, in any man's mind, the irrational and extravagant supposition, that the frustrated body of the administration could stand—That its members would cling to office with the contemptuous disregard of consequences which they have shown? And was it not then in the warm and generous expectation of all, that a total change of system was about to be effected, which would have instantly produced the blessings that the paragraph holds forth?

It fortunately happens to my friend and me, that there will be found, in the columns of the same identical paper, ample proof of the mind and intention with which the paragraph on the record was inserted—for, you will please to observe, that we are not charged with the writing of it. That is no part of the imputation; for, in point of fact, it was a paragraph copied from another journal, which is the uniform practice of all editors, when they see any thing that coincides with, or serves to corroborate their own sentiments, or that puts an idea in a new light. We are not striving to shelter ourselves from our direct responsibility for every part of the paper, written or copied, by this statement; but to account to you for a distinction which you may observe in the manner in which the passages that I shall refer you to, and this paragraph, are presented to the public eye. It is no more than a distinction which belongs to the mechanic part of the composition of a newspaper. That which is our own, or that which is new—that which is important, or that which is peculiar to ourselves, we display in space, or in a different character from that which is borrowed, and that which may be in every other paper as well as our own. With this distinction, gentlemen, you will view the whole paper—and you will see whether the passages, to which I shall point your attention, which precede this in point of place, though separated from it—are not *bond fide* connected with it in sense, though disjoined in situation; and whether they will not lead your judgment to form a true estimate of the mind and intention with which we admitted this tail-piece to the narrative.

I most perfectly acquiesce in the clear truth, propriety, and necessity of the rule which his lordship has laid down, as to the description of matter which I may desire to be read. If I

were so far to forget the respect which I owe to the Court and to you, as to desire passages quite extraneous and foreign to the subject to be read, and attempt to raise an argument from them, I should be properly rebuked by the noble and learned lord. But I am not so bewildered. I know that nothing would be more absurd than to join things which have no connexion. If we were charged, for instance, with the insertion of a paragraph offensive to morals, or with any crime the most intolerable and abhorrent to our natures, such as blasphemy or impiety, and that we were to bring a thousand paragraphs to prove our loyalty or our patriotism, they would not, and they ought not, to stand us in any stead, for we can only adduce that which is pertinent to the matter in issue. But when I agree to this, I must lay in my claim, that the mere disjunction of paragraphs, which are kindred in tenor, and appropriate to the case, shall not nullify them, nor deprive me of their benefit; for the noble and learned lord will tell you that you have a right to take the whole paper into your view—That such has been the noble and learned lord's own just practice, and recommendation to jurors, when he told them in a former instance that the mind and intention of the defendants were to be made out and ascertained from the whole tendency of the book or paper upon which the record was bottomed.

Now, gentlemen, let me beg of you to attend to the immediate cause and reason of the appearance of the paragraph complained of in my paper of the day mentioned. There is, as I said before, a full, temperate, and faithful narrative of the offer of negotiation which had been made by Mr. Perceval and lord Liverpool; to lord Grenville and lord Grey—and there is contained in that narrative a train of reasoning upon the terms of the overture that had been made, on the answers thereto, and on the result. Having prepared and digested this paper, and delivered it to Mr. Lambert for insertion in the "Morning Chronicle," I met with this paragraph in a respectable and well-written Sunday paper (The Examiner), and finding it to harmonize with the essay I had prepared, I took it as a fit and appropriate postscript; a just corollary from the foregoing propositions, and I directed it to be copied accordingly. I do not come here, therefore, to prate about negligence, or oversight, or creeping in by accident—No, I took it with my eyes open, in the morning, with my senses fresh, and with the entire approbation of my judgment as to its innocence. The first passage in the narrative, gentlemen, to which I would beg leave to draw his lordship's attention and yours, is in the second column of the second page, and is as follows:—

"Lord Grenville arrived in town on Thursday last, the 28th, at night, and, it is understood, that on the 29th he communicated to Mr. Perceval that he could not, consistently with his principles, have any interview, or enter into any discussion with him, with a

view to his forming an accession to the present administration, as he considered their measures to be most objectionable in every respect; and he could never approve the principles of their formation. It is understood that when he said this, he begged to express his most invariable and profound sentiments of respect for his majesty; that his conduct and principles, he trusted, had always been calculated to heal, not to foment, the divisions of the empire, but that he could not view what was proposed as tending to that end."

This will serve to show you what was the feeling of the mind of that great and superior statesman as to the character and tendency of the system to which he was invited to accede, and in which his declaration is distinctly stated, that his conduct and principles had always been calculated to heal, not to foment, the divisions of the empire, "but that he could not view what was proposed as tending to that end." Upon this the narrative proceeds to reason; and the whole tendency, purport, and drift of the subsequent argument is to show that, by a different course of proceeding—namely, if the noble lords had been commanded to attend his majesty in person, there would have been an immediate prospect of a change of system that would have tended "to heal, not to foment, the divisions of the empire." And this is particularly expressed in the next passage, to which I beg leave to draw your notice—where it is said:

"If the question relates to prospective measures, whether of war, negotiation, commercial intercourse, or domestic economy; if in those great leading lines of government the conduct is to be directly the reverse of that which has been pursued, who shall represent to the sovereign the wisdom of the measures that are to be proposed, or the mischief of those that are to be abandoned? Are those whose aid is asked in the crisis and exigency of public affairs, to be shut out from this communication; and is it to be entrusted to those who have a direct interest to give the representation a false colour, and, independent of interest, have views of the question calculated to mislead their judgment?"

So much for my meaning, as to the change of system, meaning a total change of measures only, but that that total change would bring a crowd of blessings in its train immediately and of course.

No, says Mr. Attorney-general—not immediately, for the period was to be postponed—no blessings till after the demise of our sovereign lord the king—and the crime charged, that I postponed this happy period until that day which we all trust may be so distant. Read the paragraph which introduces that which speaks of the king, and of the heir-apparent, together with that paragraph itself—and then see, gentlemen, what interpretation you will put upon my adopted paragraph. It is as follows:

"Awful as the crisis is, and arduous as the



task would be, we may conclude from their principles and conduct (meaning the principles and conduct of lord Grenville and lord Grey) that they will be ready to devote themselves to the service of their king and country. But they cannot, consistently with those principles, permit lord Liverpool and Mr. Perceval to be the persons to communicate their thoughts and views to,—a rule of action which we conceive to be most correct; not dictated by any narrow-minded principles of exclusion, but resting upon those sound and well-considered views of the constitution which ought to govern their conduct as statesmen in this most important and interesting matter.

"We ought to add to this statement, that his royal highness the prince of Wales has, upon this most curious and interesting occasion, taken a line which must exalt his character and endear him to his country. The sentiments of his royal highness on the awful crisis of the empire, and of the character of the measures which have led to that crisis, are not unknown. He feels on the subject like every other enlightened man, but more strongly, perhaps, because he has a deeper interest than any other in its welfare; but, from some unfounded rumours respecting his interference in the arrangements which were in contemplation, the prince has thought it his duty to express to his majesty his firm and unalterable determination to preserve the same course of neutrality, which he has maintained, and which, from every feeling of dutiful attachment to his majesty's person, from his reverence of the virtues, and from his confidence in the wisdom and solicitude of his royal father for the happiness of his people, he is sensible ought to be the course that he should pursue. We have no doubt but that this assurance of the filial respect of the heir-apparent, in not interposing his high influence in the forming of an administration, will be most acceptable to his majesty."

I pause here, gentlemen, and fairly put it to you, whether I might not safely leave my whole case, and that of my faithful friend; in your hands here, with this demonstration of my feelings, with this declaration of my opinion before you. Will any fair man say that I do not in this paragraph inculcate the duty of love and reverence for his majesty, by stating, not merely my own ideas of his royal virtues, of his wisdom, and paternal solicitude for the happiness of his people, but the opinion and feeling of the illustrious personage, the highest subject in his empire—the most interested next to himself in its welfare—and whose example of reverence and devotion was so well calculated to inspire confidence and attachment in every class of the community? This paragraph, so expressing his royal highness's sense of his majesty's paternal wisdom and solicitude, I wrote, and I declare this day, in the presence of God and my country, that it expresses my own sentiments as one of his majesty's most humble subjects.

Is there any thing here that talks of post-

poning the blessings to another reign? No, directly the reverse. There is present consolation held out to the people in the assurance of his majesty's wisdom and paternal solicitude, and there is the cheering prospect of their being perpetuated by the description of the virtues of the heir-apparent. I feel that I am brought here improperly, and that, instead of being charged with this as an offence, I should have received the thanks of every good friend of the monarchy for the sentiment I promulgated.

I confess my astonishment that we should be brought here upon such a charge. And I have endeavoured in vain to find a reasonable justification for the law officers of the Crown in this proceeding. I cannot bring myself to believe, that they acted on the hasty and intolerant animadversion that was made upon the text by a rival journalist the next day—an animadversion that was more than ordinarily coarse and violent; but I cannot help thinking, that the comment of the "Morning Post" has been officiously read, so as to make the impression in some quarters from which this prosecution really originates; and that it is not the well-considered result of an examination of the paper by the learned gentlemen themselves.

Here the Attorney-general interrupted the defendant and appealed to the court. He said, that he had remained silent longer perhaps than he ought, and suffered the defendant to wander from the point at issue; but now that he was drawing into observation persons not in the cause and not in court, and even naming them, he must interfere, and say that he could not submit to the irregularity.

Lord Ellenborough said, that if Mr. Attorney-general had seen reason to stop Mr. Perry before, he might have done so; if he had himself seen any material cause for interference, he certainly should have felt it his duty to have done so; although, when a gentleman came into the court to speak for himself, they must not be fastidious if he did not entirely regulate himself by the established forms of their proceeding. Mr. Perry certainly must abstain from personal allusions.

Mr. Perry.—My lord, I respectfully submit to the rules of court, persuaded as I am that my ignorance of its forms will not be taken as a trespass; and that, under your lordship's protection, I shall not be unnecessarily narrowed in my defence. I was only endeavouring to find a motive to account for the prosecution, and I am perfectly sensible that their motives can be no justification of my conduct, if wrong.

Mr. Perry proceeded.—Gentlemen, take the paragraph by itself, unconnected with the illustration which I have given, and see if it can be tortured into the meaning which is put upon it. It does not allege that the successor of our present sovereign lord is to be more popular, it states only that he has the finest opportunity

of becoming nobly popular. Can these words involve even the insinuation of disrespect to his majesty's sacred person? May they not rather be fairly construed into a most courteous and loyal compliment? Have I not a right to say that the duration of his majesty's happy reign, the fiftieth anniversary of which we are now celebrating as a jubilee, has given the finest opportunity (of which the paragraph speaks) for the heir-apparent to learn the means by which he may make himself nobly popular? Was there ever an heir-apparent since the Revolution—since the establishment of the monarchy—since the beginning of the world, that did possess such opportunities as his royal highness the prince of Wales? Did ever prince study the art of government in such a school—or did ever prince undergo such a probation, as the length of his royal father's reign, and the fearful events which have passed under his eye, have afforded to his royal highness? Nay, after all, what is this, but what happens every day in colloquial discourse, when it is a common flattery to say to a youth in the presence of his parent—"that you wish he may be a better man than his father?" If I had not determined to abstain from every thing that could have the air or tone, or emphasis of elocution—that could be thought to be an attempt to engage and to work upon your feelings,—I could here adduce the most beautiful and the most tender passages from ancient and from modern writers—from the pages of the historian and of the poet, to show that in all times and by the most sublime allusions, it has been considered the most endearing sentiment to the heart of a parent, that his virtues and his glory were to survive, and even to be transcendent in his son. But I am not come here, to attempt to stir the emotions, but simply to address the understanding—and I may surely say, without disparagement of the parent, that the son may be nobly popular by following the example he has set; by treading in his steps; by having become so intimately acquainted with the character, with the feelings, and with the interests of the people, he will, in due course of time, be called on to govern—and what I conceive to be also most favourable, that he will be of a mature age, to choose the persons, with whose experience, ability, and maxims of government he has had such means of being so thoroughly acquainted, as to enable him to give to his own free choice of his administration the confidence of his subjects.

But, I am able, fortunately, to show you, by that which must be present to all your recollections, that at the time of the publication of the paragraph in question, there was a great topic of public interest in universal discussion, the nature and meaning of which you will discover in the context to which I have drawn your regard. At that time parliament was not sitting. Public agitation was at its height: the topic was in every mouth; and the "Morning Chronicle" was the field of discussion on one side, as rival journals were on the other. It was

perfectly understood what was meant by the allusion of lord Grenville to the principles which would tend to heal, and not to foment the divisions of the empire. And to show you that at the time my reasoning on the subject was taken and construed to mean distinctly, that the blessings which would crowd upon us by a change of system, would arise directly, and not remotely, if the noble persons who had been applied to as fit and proper ministers, to strengthen and uphold the then enfeebled, tottering, and disorganized cabinet, had had the opportunity presented to them of impressing on his majesty's royal mind the conviction with which they were themselves impressed, I have only to recall your memories to the discussions of the time, and to the declarations which were understood to come from authority. Nay, I can show you, that the reasoning of this very paper was so understood by that authority, and so answered on the very day subsequent to my publication. I presume, my lord, I may be permitted to read as a part of my speech, a paragraph to this effect, in direct answer to my article, from a paper which was published the day after?

Lord *Ellenborough* said, that if it was a paper published after the appearance of the paragraph in question, it certainly could not avail the defendants in showing their mind or intention in the previous publication; and he informed Mr. Perry, that he could not draw any inference from any paper whatever, without putting it in and proving it regularly as evidence; in which case the prosecutor would have the power to adduce evidence to rebut it if he should think fit.

Mr. *Perry*.—I thank you, my lord. Gentlemen of the jury, I am grateful to his lordship for the information by which your time will be saved, and by which I feel that I shall be served; for the paragraph I was going to read might have led me into a train of reasoning, which I am sensible, upon reflection, it will be discreet for me to avoid.

Gentlemen, it is only necessary for me now to say, that not only from the paper of the day, but from all that I ever published, I wish you to form your judgment of my intention in this one act. It is, in my opinion, from the whole body and tenor of a volume, that its tendency is to be taken; and a journal, though the numbers are published successively, is of the same character. You must look to the style, drift, and spirit, with which it is written, and the doctrine which it strives to inculcate. Gentlemen, try us by this most faithful, but most piercing test. More than thirty-three years of my life have I been engaged either as the editor or proprietor of a public journal—more than twenty years has my faithful friend laboured by my side; and that we are both destined to persevere in the labour may be owing to the integrity we have practised in it. In all that time, the present is the second instance in which we have had a trial in this or any court on any

charge of a criminal nature. And when you consider the anomaly that belongs to the avocation—that libel is to be judged by a severer criterion than any other species of misdemeanor is subject to—that we are made answerable for the criminal acts of others—that it is a profession (if we may be allowed to call it by that term—I know that I have acted liberally in it) which requires daily and incessant toil—to be performed at an unseasonable hour of the night, after the fatigues and exhaustion of the day, sometimes after the indulgences which man in society may be occasionally permitted—a profession subject to the arts which are too frequently practised to ensnare us in an unwary moment, or to beguile our vigilance—to partialities that may mislead the honest judgment, and to temptations that human frailty may feel it difficult to resist—it will be allowed that that honesty, that vigilance, that respect for morals must have been exemplary, which have so effectually secured us against the imputation of guilt.

Sixteen years ago we were charged in this Court with a libel on the king's government, by the publication of an address from the town of Derby. It was conducted by the noble and learned lord who is now the lord chancellor of England. He did not lay the information himself, but he found it in his office, and felt it to be his duty to bring it on. The disorder of the times had given a most serious alarm, not to government only, but had distracted and divided the greatest political parties in the realm. It is not only painful, gentlemen, but disgusting to speak of ourselves, and nothing but the peril in which we stand here this day can justify to my own feelings, the breach of taste which I commit by a reference to the testimony borne by the two noble and learned lords, lord Eldon, who was the prosecutor, and lord Erskine, who defended us, to our reputation at that time. I will not trust my memory with the words, but will presume to read them from the authentic document taken in short-hand at the time, and which was published in the form in which I now hold it in my hand.

Lord Ellenborough here begged Mr. Perry to stop; and said, that he had his doubts whether, in a criminal prosecution of this kind, a defendant could refer to the documents and evidences of the former part of his life, as proofs by which his intention in any subsequent act could be deduced. He knew that in cases of libel, as well, indeed, as in other cases, even more serious, this sort of reference to anterior testimony had been claimed and allowed; but he confessed he had his doubts as to the propriety of such allowance. On the trial of Mr. Horne Tooke, for instance, on a charge of treason, that gentleman had claimed this right, and it had been granted by the judges who tried that indictment; but he was not prepared to say that he was of the same mind; though, of course, it was not necessary for him to say more than that if ever the case

should arise before him, it would become seriously his duty to consider whether such proof could be admitted. In the present case, Mr. Perry proposed only, he supposed, to read a passage or two from the report of the trial. If he meant to put it in as evidence, he thought it could not be admitted; but it was competent to Mr. Perry in the course of his argument to allude to the declarations which were made by those noble and learned lords, and he would of course have all the benefit of the allusion.

Mr. Perry thanked his lordship.—Gentlemen, I meant but to state to you in their own words, what I shall now only mention to you in substance. Lord Eldon said, that "Considering every individual as under his peculiar protection, he felt it to be his duty to acknowledge, that in no instance before that time had we been brought to the bar of any court to answer for any offence, either against government or a private individual. And from all he had ever heard of the defendants, he believed us to be men incapable of wilfully publishing any slander on individuals, or of prostituting our paper to defamation or indecency." This was the declaration of Lord Eldon, the prosecutor. On that day we had the great and distinguished advantage of being defended by that noble and illustrious lawyer, who upon every occasion identified himself with his client; who became as it were the brother of his blood—nay, the protecting parent to a child in danger, whose exertions in its rescue neither sword, nor fire, nor the waters could repel—the warmth and vigour, and integrity of whose soul struck to the hearts of jurors the conviction by which he was himself so visibly penetrated, and in whom the eloquence of the advocate was rendered irresistible by the fervor of the friend. That noble lord spoke of us upon that occasion in terms, which it is impossible for me to repeat, but which have planted indelible gratitude in our breasts.

What we were then we are now. We never stood upon the floor of this or any other Court of Justice to receive its judgment, either for a public libel or a private calumny.

For myself, I can say, that the impression first made on my mind when a youth, and when I first entered the gallery of the House of Commons by that great Orator of Reason, Mr. Fox, fixed my principles, and have given consistency to my life. I have never been treacherous to my first professions, nor indolent in carrying them into practice. I have never been violent in my language, but I am sure it will not be said of me that I have ever been equivocal. I never became the advocate of any cause but that which I thought honest, and never embarked in any cause for money. I have been ever found steady to the maintenance of freedom, to the cultivation of the human mind, to the preservation of morals,

and to the true interests of my king and country. Having espoused the doctrines, upon conviction, of that party, the ancestors of whom placed the illustrious family of Brunswick upon the throne of these kingdoms, I have acted upon their maxims, without having any other interest in their success, than that which must spring to me, in common with that of my fellow citizens, by perpetuating the blessings we enjoy. And by acting in the middle path, which the whigs of England have ever pursued, it has been my lot to be equally assailed and vilified by the extremes of both sides.

For my faithful friend, Mr. Lambert, I can with equal sincerity say, that in his more sedentary department of my concern he is equally above reproach. I defy all mankind to say of him that he could ever be diverted or seduced from the faithful discharge of his duty to the public and to me; or that any temptation could ever make him wilfully to insert an article in "The Morning Chronicle" that ought to be left out, or to omit an article that ought to be made known.

I have done. I have only to thank the noble lord on the bench and yourselves for the kind indulgence which you have shown to me in a situation so new, and to which I am so unequal. I will add but one word more. The obloquy to which the humble but not unuseful profession of a journalist has been of late so unadvisedly subjected, was a powerful inducement to my mind to appear before you in person this day; that I might bear my testimony, if it can be of any weight, to the injustice of the censure. Indiscriminate censure must always be unjust—it is unworthy of enlightened men to throw out, and in this instance it would be very unwise in Englishmen to cherish. I am sure that its influence will not penetrate these walls this day. I feel conscious that the imputation does not attach to my faithful friend nor to me; and I am sure that both the learned lord and yourselves are too noble and too upright in your minds to suffer it to approach you.

Gentlemen, the cause of the liberty of the press in England, under the direction of the noble and learned judge, is in your hands this day. "The Morning Chronicle" stands now, as it did in 1793, in the front of the battle, not only for itself, but for the liberty of the press of England. The point at issue is—whether it shall continue to assert the principles upon which the whigs have ever acted, and by which their only object is, to perpetuate to his majesty and his heirs, the throne to which they persuaded the people of England to call his ancestors, by securing it upon that basis, which forms not only its strength, but its lustre, and which I find truly described in a recent column of my own paper. "Nothing on earth ever equalled the magnificent and richly-ornamented power and greatness of the kingly office in the Constitution of England, when exerted in due harmony with the influence and authority of

the two houses of parliament in unison with the public voice. The boasted unity and vigour of despotism is impotence compared with the concentrated energy of such a government."—May it be perpetual.

#### REPLY.

Mr. Attorney-General.—Gentlemen of the Jury;—The gentleman who has now addressed you in his own defence, has stated, that many years ago, when a noble friend of mine filled with so much credit the situation it is now my honour to hold, that noble lord passed an eulogy on the defendant and his paper. I have no knowledge of what occurred on that occasion, but I give the defendant full credit for the correctness of what he has stated. The defendant seems from his gesture to be sensible of the acknowledgment I have made him, but I assure him this is very far short of the credit in other respects which I would willingly give to the defendant. In whatever situation I shall be placed, I shall be happy to give to every one that credit which is due to him; and however much it may surpass the expectations of the defendant, he shall not find me less desirous of doing him justice than the noble lord had been. Persons who defend themselves are often brought into circumstances of great peril; but that is not the case in the present instance. The defendant has lamented the absence of a learned lord, a friend, of whose assistance he had formerly availed himself in this Court (lord Erskine). I should also regret the removal of that learned lord, had he not been called to fill a higher station. In the eulogium passed on that learned person by the defendant, I, and all who have witnessed his conduct in this Court, must concur. But the defendant certainly has not suffered by the absence of that learned lord, or of any advocate whatever. He has done himself ample justice, and has proved himself fully equal to the task he has undertaken. Though a defendant who pleads his own cause is subject to inconveniences, there are also advantages which arise from the same circumstance—irregularities may be committed by persons in that situation, which it would not be worthy of counsel who opposed them to endeavour to correct. The defendant has admitted that I have conceded to him as much liberty to the press as he wishes to contend for. I surely did concede to the defendants the full and free discussion of public measures. But, I think, that when the defendant indulged in such liberal abuse of all those who fill high situations in the state, he exceeded the bounds which would have been allowed to a counsel.

Lord Ellenborough could not say that the defendant had been indulged in any observations which would not have been permitted to an advocate.—If the attorney-general had called the attention of the Court to any thing irrelevant which the defendant was advancing, a check would have been put to it. But in the

heat of argument, in such cases as the present, matter might have fallen even from a counsel, not strictly applicable to the case; but which the Court might not feel itself called on to check. Interruptions of the kind tended to derange the ideas of the speaker, and this must be still more applicable to a person not accustomed to address a jury.

*Mr. Attorney-General.*—If his lordship had only heard me two sentences farther, he would not have interrupted me. I never meant that it was the duty of his lordship to have interrupted the defendant. All I meant to say was, that the defendant possessed advantages from the circumstance of pleading his own cause; that he had taken a degree of licence not altogether justifiable; and that, because he was as to us a layman, if the gentleman will allow me the expression, I did not think it proper to interpose; but I did not mean to insinuate that it was his lordship's duty to interfere—no, gentlemen, it was mine; and I was only going to say why I had not done so. I saw what it would lead to—that I must bear the abuse the defendant bestowed with so great liberty; but I thought it would be unworthy in me to enter into the contest. It might have been my duty to defend those persons whom the defendant so liberally attacked; but considering the situation in which the defendant stood, I determined not to go out of my way; and as the defendant was not accustomed to proceedings of this kind, to allow him to go as far as he chose. I thought the defendant at one time was *feeling his way*, to ascertain how far he might proceed. He was stating what had appeared in another paper of which I knew nothing. In doing so the defendant threw out a doubt if he was not exceeding the line of propriety. He found that he was, but not till he had named the paper; having previously spoken of it in terms of more than reprobation, and scandalous as to the author of the article to which he alluded, in the most adroit and skilful manner (I must say) the defendant did refer, wishing to know if he was going too far, but taking care at the same time to go his full length. I did think that in naming the paper, the defendant did go farther than any advocate would have been permitted, and I did accordingly suggest that there were limits to the licence he was taking. The defendant, however, has gained his point; and he certainly has shown greater skill in managing it than any man I ever met with. The mode in which the defendant introduced himself to you, was well calculated to interest you in his favour. A well-affected simplicity, want of knowledge in the forms of proceeding, inability to do justice to his defence, joined to colourable reasons for not placing it in the hands of others, were well selected by the defendant for this purpose; and having in this manner interested you in his favour, he was seen to bring to his aid talents which do not fall to the common lot of

man. These are the advantages which the defendant has gained by pleading himself his cause to day (and more consummate address I never witnessed), but, yet, they will not avail him. As far as the sentiments of the defendant in his speech this day, or as they appeared in other parts of his paper, can go to an alleviation of his offence in publishing the libel in question, so far let his guilt be alleviated. I am happy to find that the same man in the year 1810, is not so unlike the person lord Eldon found him to be in the year 1793, as from the paragraph in question I must have conceived him to be. The defendant wishes that the jury could look into his mind, and see what passed there. If the Court, who may have to pass sentence on the defendants, could do so, it would be fit that they should be governed by what they saw passing there: But what you, gentlemen, are here to try, is, whether a paragraph, stating that certain blessings are to be attained by the people of this country, but that the period of their attainment is not within the life of the reigning sovereign, but on the accession of his successor, and consequently that the period of the reign of the present sovereign must be interposed before they can be attained, is, or is not a libel. If such be the meaning of the paragraph, is there any man so besotted as to deny that the tendency of it could only be to alienate the affections of the people from the reigning sovereign, and to teach them to look forward to the era of his dissolution as the period at which those blessings are alone to be enjoyed? This, I must contend, is the fair inference to be drawn from the publication in question, notwithstanding the eloquence which has been displayed by the defendant in giving it a different interpretation. Though I have attended, to the utmost of my power, to the address the defendant has made, I could not comprehend any part of it as going to the real question. He went round it and round it, but with singular care, and I must say with great dexterity, avoided coming near it. What is the meaning which the paragraph carried along with it in sound sense and reason? I was short in my opening of the case, because I felt it to be so plain that I was afraid reasoning on it might bring on obscurity, which simply reading of it could not do. How, then, was it to be defended? Not by itself, for that was desperate. It was impossible to read it and not to say, that it bore that a change of circumstances would bring blessings, but that the era for their attainment was the accession of another sovereign, and that he would be nobly popular in the country. Can any man say, that the paragraph will bear any other interpretation? The time at which these blessings are to be expected, is the commencement of the reign of the next sovereign; the public are to look forward to that period, without hope or expectation of any of the promised blessings visiting them during the reign of his present majesty. Then, how is this paragraph

to be explained away by any other parts of the same paper? It is said by the defendant, that the paragraph in question was not in the large type, and that this which was displayed conspicuously, was all which the publishers of such papers held out as their own. This is the first time I ever heard of such a doctrine, and his lordship will tell you that it is impossible such a defence can be admitted. The defendant has also said, that there are other passages in the same paper which prove that he did not hold the sentiments here imputed to him. To take up that matter drily, can it be said that a man is intitled to put a paragraph of the tendency I have described, into an insulated part of his paper, and then to argue—"It is true, you here find this paragraph, but if you look three columns back you will find one of a different tendency, and the one will correct the other?" No such argument can avail any man.

But it is said, the paragraph did not go so far, and that what I have stated was not the meaning of it. I could only take the paragraph by itself, and to my mind it had only this one meaning, that the blessings he figured are only to be attained in the reign of his majesty's successor. When this idea was in the mind of the writer of the article—when the person of the king must have been before him, how came he not to state, that his present majesty might have an opportunity of becoming nobly popular by a total change of system, but to reserve that claim to popularity for his successor? To proclaim to his readers, that his present majesty will not entitle himself to claim an attachment on the part of his subjects, but that it is the successor of his majesty only who will do it? It is impossible, I contend, for any man to wrest the paragraph to any other signification. But what is it that the defendant relies on to show, not only that he had not, but that he could not have any such sentiments in his contemplation? Not the sentiments of the editor himself, but what he related of another as being his sentiments. "You must not," says he, "impute disloyalty to me, because in another part of the paper I truly impute loyalty to lord Grenville, and state the expressions of loyalty used by him." It does not appear to me, that there is any thing like rational argument in this. But the defendant says there is still another part of the paper which proves his loyalty, and this is a paragraph in commendation of the prince of Wales, and of his veneration for the virtues of his father. It is impossible, either for the defendant, or for the learned lord who has formerly been his counsel, to hold the character of his royal highness in higher respect than I do; but I am at a loss to see what connection there is between this paragraph in commendation of his royal highness, and this tail-piece, as the defendant describes it, tacked not to it but to another article. The sentiments ascribed by the defendant to the prince of Wales are most truly so ascribed with the view of magnifying his character; but what argu-

ment can be built on this to show that you are not from the other paragraph, to collect, that the accession of his majesty's successor to the throne is not the era at which the blessings alluded to are to be attained? So far the reverse of this, it furnishes an additional argument for the interpretation I contend the paragraph can alone receive. I should not have thought the two paragraphs at all connected together: but supposing them to have followed each other, or to have formed part of the same article, what would they together have amounted to? A commendation of the prince of Wales—a declaration that a total change of system would produce an infinity of blessings—followed by an observation that the successor to his present majesty would have the finest opportunity of becoming nobly popular. In other words, "Nothing but change of system can produce the blessings alluded to, and his majesty's successor—that prince I have before commended—will have an opportunity of becoming nobly popular, by acting directly contrary to that system his father is now pursuing." Could any man give a different interpretation to the whole, supposing the paragraphs to stand together? The defendant says, this was like a postscript or corollary to the article in the former part of the paper. I say, if they were connected, my argument would gain additional strength from the circumstance. But if connected, how happened it that they were so disjointed? The defendant says the article charged as a libel is to be taken as a part of the former long article. What part? The article immediately preceding it, begins—"Three sail of the homeward bound Jamaica fleet have arrived at Cove severely injured in masts and rigging, &c." Then, if this argument of the defendant's is correct, it follows, that there is not a paragraph which could possibly find its way into a newspaper, however poisonous it might be in itself, which, when coupled with another paragraph in some other part of the same paper, might not become perfectly innocent. For a person of so acute an understanding as the defendant possesses to hold out such an argument to you, is to endeavour to deceive you. It was unworthy the understanding which he has so ably, and, though he disclaims it, so eloquently exhibited to-day, to contend that the articles have any connexion. If they had, however, it only makes the matter worse. I will do the defendant the justice to say, that I do not believe he intended they should have any connexion. If he had first perused the one, and then adopted the other as having reference to it, his intention would be the more strongly manifested; and therefore, if the paragraphs were to be connected together, the observations that I have before made would be greatly enhanced.—If there be nothing in this paper (which I am certain there is not) that can give a different sense to the paragraph complained of, it must be judged of, as it stands, by itself. The effect of it no man who reads it can doubt. I have no doubt his lordship will tell you that the para-

graph could have no meaning but that which I have assigned to it; of course, it will be your duty to convict the defendants.

#### SUMMING-UP.

Lord *Ellenborough*.—Gentlemen of the Jury; This is an information against the two defendants, Mr. Perry and Mr. Lambert, for the publication of that which is alleged to be, "A scandalous, malicious, and seditious libel concerning our lord the king, and his administration of the government of this kingdom." It is therefore treated as a libel upon the person of his majesty and upon his majesty's administration of the government of the kingdom. That is the way in which it is charged. The words of the libel (and it is a very short one, and therefore you will be able with better effect to apply your minds to it, fairly to comprehend its meaning) are these—"What a crowd of blessings rush upon one's mind that might be bestowed upon the country in the event of a total change of system." By change of system, you will clearly see, is not meant a change in the frame of the established government, an overthrow of the constitution, or of the kingly power under it. That is not meant by nor imputed to it; for the descent of the monarchy to the successor of his majesty is mentioned in the next branch of the sentence. You are, therefore, to discharge from your minds the necessity of considering the former part of the sentence as intending, or meaning to insinuate that a change in the frame of the constitution would bestow blessings on the country, as the words in this part really mean a total change in the plans and measures of the administration, as these words are commonly understood to be used and applied to the system of the king's ministers for the time being. Your attention will be drawn and applied to discover the true meaning of the subsequent words of the sentence, which, coming after the words I have read, are as follows:—"Of all monarchs, indeed, since the Revolution, the successor of George the third," meaning our present lord the king; that is the only innuendo in it (and of course, without it, one would have known George the third meant our present sovereign lord George the third), "will have the finest opportunity of becoming nobly popular."

Gentlemen, the defendant himself has given his interpretation of these words, and he says that they are to be understood in an innocent sense by reference to the context of the paper, and that there are to be found in this same paper, in which the paragraph appears, other parts which show he did not mean to disparage either the wisdom or the virtues or the personal solicitude of his majesty for the welfare of his people. It is competent to the defendant to read a part of the same publication; for if it is near enough to have a fair bearing upon this paragraph, it ought to have its influence in determining its sense. The first paragraph referred to merely conducts us to the part the

defendant alludes to; it relates to a political event which passed about the period of the publication of this paper (the 2nd of October). After having stated that certain noble lords were communicated with upon a subject which it is unnecessary for me to discuss, but which you will perfectly understand to be the subject of this paper in part; he says, "Awful as the crisis is, and arduous as the task would be, we may conclude from their principles and conduct," speaking of the two noble lords adverted to (my lords Grenville and Grey) "that they will be ready to devote themselves to the service of their king and country. But they cannot, consistently with those principles, permit lord Liverpool and Mr. Perceval to be the persons to communicate their thoughts and views; a rule of action which we conceive to be most correct, not dictated by any narrow-minded principles of exclusion; but resting upon those sound and well considered views of the constitution, which ought to govern their conduct as statesmen in this most important and interesting matter." Then he afterwards says, and this is the part to which I would draw your attention; "We ought to add to this statement, that his royal highness the prince of Wales has, upon this most curious and interesting occasion, taken a line which must exalt his character, and endear him to his country. The sentiments of his royal highness on the awful crisis of the empire, and of the character of the measures which have led to that crisis, are not unknown; he feels on the subject like every other enlightened man, but more strongly perhaps, because he has a deeper interest than any other in its welfare; but from some unfounded rumours respecting his interference in the arrangements which were in contemplation, the prince has thought it his duty to express to his majesty, his firm and unalterable determination to preserve the same course of neutrality which he has maintained, and which, from every feeling of dutiful attachment to his majesty's person, from his reverence of the virtues, and from his confidence in the wisdom and solicitude of his royal father for the happiness of his people, he is sensible ought to be the course that he should pursue. We have no doubt but that this assurance of the filial respect of the heir apparent, in not interposing his high influence in the forming of an administration, will be most acceptable to his majesty." Here he states that his royal highness had resolved to preserve a line of neutrality, and that from the estimation in which he justly held his father's virtues, and his confidence in the royal wisdom and solicitude for the happiness of his people, he had forbore to interfere.

Now, if this stood immediately next to the paragraph in question, or there was a sort of continuing context to unite them, it would be fitting for you to consider (and it is fit for you to consider as they stand now) whether you are to regard this as showing really, and how far, the sense he has meant to con-

vey in the other, supposing that these words, in the manner in which they stand, do not so clearly intimate a conviction of the wisdom and solicitude of his majesty as the others do; and the question for you to try, as it respects these words, is, whether they are really *bona fide* to be considered with reference to the other passage; and whether any language, in the other passage, which might have otherwise appeared improvident, did not connect itself with this, in point of context, so as to receive a qualification from that consideration.

The next question for your consideration, and which will be probably the most important question, is—What is the fair, honest candid interpretation of the words taken by themselves?

Now, the part I have read certainly imports no disrespect whatever to his majesty, on the contrary it speaks of the virtues of his majesty; it speaks of that which every body in his majesty's dominions knows, that he does entertain the strongest solicitude for his people, and a regard for his virtues is very strongly breathed in this passage. But this paragraph (as has been observed by the attorney-general) is very considerably removed, in point of place, from the paragraph in question; the one being in the fourth column of the second page, and the other being in the second column of the third page. The paragraph which is the subject of the prosecution is this: "What a crowd of blessings rush upon one's mind that might be bestowed upon the country in the event of a total change of system. Of all monarchs, indeed, since the Revolution, the successor of George the Third will have the finest opportunity of being nobly popular." Now, if the two paragraphs are to be understood, as they would be, if they stood immediately following each other, and were in immediate context and union, or rather communion, with each other, one must understand the words, in fairness, as referring to the blessings which would ensue under a change of system, and as implying that those blessings were expected from that change of system, without meaning to impute to his majesty a want of concern for the happiness of his people, or an insinuation that these blessings were not to be expected till the reign of his successor. "Of all monarchs since the Revolution, the successor of George the third will have the finest opportunity of being nobly popular."

But, taking these words standing remote as they do from each other, the most important question for your consideration is this—what is the fair meaning of this passage, standing by itself, and detached from any connexion with any other paragraph; and is it, as it stands *per se*, libellous? "What a crowd of blessings rush upon one's mind that might be bestowed upon the country in the event of a total change of system." First of all as to the words "change of system," I think, as I have said, the fair meaning of those words is a change of political system, not a change of the ordinary management of

the country in any of its vital concerns, but a change in its political government. By "total change of system," certainly is not meant subversion or demolition, because the next passage talks of the monarchy; therefore it does not mean a change inconsistent with the full vigour of the monarchical part of the constitution because it speaks of the blessings to be enjoyed on the accession of the prince of Wales.—Now, I do not know that the saying there would be blessings from a change of system, taken by itself, without reference to the period at which they may be expected, in expressing a wish or a sentiment that may not be innocently expressed on a view of the political condition of the country. There may be error in the present system, as it may obtain, but without any vicious motives, however, on the part of his majesty, it may be from the way in which his majesty may view particular parts of the government of the country, and arising entirely from an erroneous view. I do not know but of one being to whom error may not be imputed, but it must be without any imputation of bad motives. If it be said that his majesty, in the exercise of his wisdom and his virtues, has taken an unfortunate view—an erroneous view of the interests of his people—I am not prepared to say that the imputing to his majesty an erroneous view of the interests of his people is imputing to him that which materially degrades his majesty; go one step further, and say it is from a partial, corrupt view, with an intention to favour, or to oppress any individual, and it would become most libellous; but to lament merely an erroneous system of government, as that which obtains under his majesty's reign, I am not prepared to say is libellous.

Then comes the next paragraph—"of all monarchs indeed, since the revolution, the successor of George the 3rd will have the finest opportunity of being nobly popular," it does not say that he will become so, but that he will have an opportunity of being so. What is the fair import of that? for words are not to be taken either in the more lenient sense or the more criminal sense, but in that sense which they fairly import. Formerly it was the habit to say that words were to be taken in the more lenient sense, but that is not now the interpretation in a judicial construction of words; they are not to be taken either in the more lenient or the more harsh sense, but in the interpretation which fairly belongs to them; but I must, in order to get at that which makes them take the more harsh interpretation, get at something which naturally gives them that interpretation, and discover from them that they are made to impute to his majesty any thing which is corrupt—any system of conduct—any motives which it would be vicious in a subject to suppose his majesty to entertain, and which it is, therefore, mischievous to impute. Now it says, "Of all monarchs, indeed, since the revolution, the successor of George the 3rd will have the finest opportunity of being nobly popular."



If it mean that his majesty during his reign or for a length of time may have taken an imperfect view—an erroneous contemplation of the interests of the country, as it regards either foreign nations, or our own, or the system of our internal policy—if it impute nothing but honest error without crime, I am not prepared to say that that is of itself libellous. The rest of the paragraphs do seem to me too remote in point of place, and too divided in point of matter, to have any immediate necessary connection with the paragraph in question: but that is a subject for your consideration. But if it has not (and taking it as I am now doing substantively, and by itself), it is a matter I think somewhat doubtful, upon the fair construction of these words, whether the writer meant to calumniate the person and character of our august sovereign.

If you are satisfied that was his meaning, by the application of your understanding honestly and fairly to the paragraph in question, you will find the defendants guilty; but if, on looking at this paragraph by itself, or still more, if you shall think yourselves warranted to import into your consideration of it, what goes before, notwithstanding it is considerably distant in place, and disjointed by other matter and you infer, from that connection, that this was written without any purpose to calumniate the personal government of his majesty, and render it obnoxious to his people, you will find them not guilty.

The matter is for your consideration; you will not distort the words, but give them their fair application and meaning as they impress your mind. What is most material is the substantive paragraph itself, and if you consider it is meant to impute that the reign of his majesty is the only thing interposed, between the possession of great blessings which are likely to be enjoyed in the reign of his successor, and that it is intended to render his majesty's administration of his government obnoxious, it is a calumnious paragraph, and to be dealt

with as a libel. If, on the contrary, you do not see that it means distinctly and fairly, according to your reasoning, to impute any purposed mal-administration to his majesty, or those acting under him, but is at all reconcilable to the imputing only an erroneous view of public administration, I am not prepared to say that that is a libel. There have been, at all times, errors in the administration of the most enlightened men. I will take the instance not of any of ourselves, or of our own age, but of a man who for a time administered the concerns of this country with great ability, although he obtained his dignity with great crime, I mean Oliver Cromwell—we are at this moment suffering from the most erroneous principle in his government, throwing the scale of power into the hands of France, when he turned the balance against the house of Spain, and laid the foundation for that ascendancy on the part of France, which, unfortunately for all mankind, has since obtained in the affairs of Europe. The greatest of monarchs, who ever sat upon the thrones of Europe, and who have been the promoters of the greatest blessings to their country in some respects, and who have contemplated its welfare with the greatest solicitude, have had errors, but can the statement of that be considered as disparaging them?

Gentlemen, the whole subject is for your consideration; apply your minds fairly and candidly to the consideration of the paragraph in question; distort no part of it; and let your verdict be the result of that fair consideration of it.

The Jury immediately pronounced the Defendants NOT GUILTY.

The next cause, (also upon an information *ex officio*) the King v. Hunt, on a charge of libel for the original publication of the same paragraph in "The Examiner," was withdrawn by the attorney-general.

685. Trial of JOHN HUNT and JOHN LEIGH HUNT, before the  
Right Hon. Edward Lord Ellenborough, and a Special Jury,  
for a Seditious Libel, Friday February 22: 51 GEORGE III.  
A. D. 1811.\*

COURT OF KING'S BENCH.

Friday, February 22, 1811.

SPECIAL JURORS.

Samuel Bishop, of Upper Grafton-street, Esq.  
George Baxter, of Church Terrace, Esq.

TALESMEN.

Robert Maynard, of Glasshouse-street, Oilman.

\* 2 Camp. 583. S. C.

Walter Row, of Great Marlborough-street, Stationer.

Richard Bolton, of Silver-street, Porkman.

John Rotton, of Vigo-lane, Cutler.

Henry Perkins, of Great Marlborough-street, Grocer.

William Lonsdale, of Broad-street, Cabinet-maker.

John Seabrook, of Rupert-street, Cook.

Thomas Rixon, of Carnaby-street, Victualler.

John Nunn, of Great Crown-court, Victualler.

*David Miller, of Carnaby-market North, Baker.*

**MR. Richardson.**—[afterwards a Judge of the Common Pleas.]—May it please your Lordship, Gentlemen of the Jury;—This is an information, exhibited by his majesty's attorney-general, against the defendants, John Hunt and Leigh Hunt, charging them with having printed and published a seditious libel. The defendants have pleaded that they are not guilty, which you are to try.

**Mr. Attorney-General.**—[Sir Vicary Gibbs, afterwards Lord Chief Justice of the Common Pleas.]—May it please your Lordship, Gentlemen of the Jury:—I have thought it incumbent on me to prosecute the defendants for the publication of the libel which will be proved before you this day. The tendency of the libel is, to create disaffection in the minds of the soldiers of this country; to represent to them, that they are treated with improper and excessive severity, and (what is still more mischievous), that the treatment of the French soldiers, under Buonaparte, and the means used to oblige them to undertake the military service in France, are preferable to those which are made use of in Great Britain, towards the soldiers of our army. The effect of this is obvious: it tends to raise a discontent and disaffection in the minds of the soldiers themselves; it tends to disincline others from entering the service. If that effect was to be produced, how fatal to the very existence of the country the consequences must be, it is unnecessary for me to state. Gentlemen, as the publishers of this libel have chosen to select for their subject, or rather for their motto, that which they suppose me to have said, when I was addressing a jury upon a similar occasion, it is necessary I should give you some explanation of the circumstances under which that sentence which the defendants have chosen for their motto, was spoken by me. The words with which they commence their publication are these:—"The aggressors were not dealt with as Buonaparte would have treated his refractory troops.—Speech of the Attorney General." I must let you know on what occasion that observation was made by me; it became my duty to prosecute a person of the name of William Cobbett, for a libel of the same description as that which is now submitted to your consideration: in that libel Mr. Cobbett had animadverted on the conduct of the military in the Isle of Ely towards certain persons belonging to the local militia, who were charged with mutiny. He took his account of the transaction from a newspaper published in London, and with that he opened his subject: it professed to give an account of the mutiny, and of the means used to suppress it: it stated the circumstance of calling in other military force to suppress the mutiny; that it was suppressed; that a court-martial was held on the offenders, and that they were sentenced to receive a punishment, part of which was inflicted, and part spared, or remitted.

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Having chosen this for his subject, the defendant in that case animadverted with extreme severity on the conduct of those who had successfully undertaken to suppress this mutiny, and to inflict the necessary degree of punishment on the guilty parties. A part of the sentence was corporal punishment. He insulted the people of Ely for suffering such a thing to pass in their presence. He took occasion (and it is to this I beg your attention, for it is connected with the present subject), to speak of the manner in which Buonaparte was supposed to recruit his army, and he proceeded to taunt and revile those who reflected on the means used by Buonaparte, stating that the same discipline existed with respect to the British soldiers, and that it was, therefore, ridiculous to animadvert on the severity exercised by Buonaparte towards his soldiers, when the same system of discipline and severity was resorted to in this country with regard to our soldiers—evidently meaning to insinuate, and actually stating to the public, that the means used to recruit the British army were as bad or worse than those used to recruit the French army. In observing on this libel, and in observing also, that after the sentence passed on these men, who, disregarding all military subordination, had risen on their officers—after observing upon these circumstances, and stating that part of the sentence was remitted, I suppose I did say, that "The aggressors were not dealt with as Buonaparte would have treated his refractory troops." That I repeat; for I have no doubt they would have been treated with much greater severity, and that they would not have escaped with their lives.

Mr. Cobbett having been convicted of that libel, the publishers of the present libel take up the subject; and as Mr. Cobbett from a newspaper took up an account of a particular transaction in the Isle of Ely, so these publishers collect from all the newspapers they can find, accounts of the different punishments in the army, and having collected them, they present them in a mass, aggravating the manner in which these punishments were inflicted, and evidently endeavouring, by the mode in which they represent them, to inflame the minds of the soldiers against that code of laws which must be enforced while we have a hope of maintaining discipline; to render them disaffected to the service, and to subject the public to those calamities which must follow, if that effect was once produced.

In all countries where it is necessary that armies should be supported, it is absolutely imperative and indispensable that they should be governed by laws not applicable to the general state of the community. It is fit that obedience should be enforced in all stations of life: servants should be obedient to their masters, children to their parents; and in all well-ordered societies there ought to exist regulations which will enforce those duties; if, however, your regulations in these instances, should fail, the consequences, though they are

sad and painful to reflect upon, are not fatal to the public peace: they end in themselves; although in the particular family in which the subordination is destroyed, a corresponding degree of insubordination is produced, and much unhappiness ensues. But with respect to the military part of the community, if once the code of laws which you have established, and the mode in which you execute those laws, be found insufficient to keep them within the due bounds of obedience to their superiors; if once they are let loose, I have said before, that it is unnecessary to point out the mischiefs that must inevitably follow, not only as they go to the destruction of the army itself, but as carrying along with them the downfall and destruction of the whole state. It is, I repeat, unnecessary for me to point out the dreadful consequences of such a calamity.

I say this libel has the immediate tendency to produce the evils to which I am adverting; for what can tend more directly to promote that end, than by representing to those who must live subject to the military code of laws, that it is a cruel and oppressive code, and that it is administered with an unnecessary degree of cruelty and severity? Can that be exceeded? Yes it can: while you have such an enemy to deal with as the one you have, and while your army is necessarily opposed to that enemy, the mischief of such a publication would be greatly increased, if, in addition to aggravating the supposed hardships of the British army, they are brought into comparison with the system adopted in the French army, and the preference is given to that of the French army; and yet this is not done obliquely, but directly and avowedly, by the libel now before you. Having thus pointed out the principles which are applicable to this case, and which I am persuaded will decide your judgment upon it, I shall proceed to state the libel itself. It begins: "One thousand lashes! (from the *Stamford News*.) The aggressors were not dealt with as Buonaparté would have treated his refractory troops. *Speech of the attorney-general*." This I take to be a continuation of the libel to which that part of my speech was addressed. "Corporal Curtis was sentenced to receive one thousand lashes, but, after receiving two hundred, was, on his own petition, permitted to volunteer into a regiment on foreign service.—William Clifford, a private in the 7th royal veteran battalion, was lately sentenced to receive one thousand lashes for repeatedly striking and kicking his superior officer. He underwent part of the sentence, by receiving seven hundred and fifty lashes, at Canterbury, in presence of the whole garrison.—A garrison court-martial has been held on board the Metcalf transport, at Spithead, on some men of the 4th regiment of foot, for disrespectful behaviour to their officers. Two thousand six hundred lashes were to be inflicted among them.—Robert Chilman, a private in the Bearstead and Mallin regiment

"of local Militia, who was lately tried by a court-martial for disobedience of orders and mutinous and improper behaviour, while the regiment was embodied, has been found guilty of all the charges, and sentenced to receive eight hundred lashes, which are to be inflicted on him at Chatham, to which garrison he is to be marched for that purpose."

Then they give you the authority from which they derive the information—London newspapers.—So that you see that they have collected from all the London newspapers—and perhaps you are to learn that there are sixty published every week—all the instances of military punishment, and presented them to the public indignation, in a mass, through the medium of this libel.—Now to pause for a moment here—Do you recollect the number of troops in our service?—In the local militia there are 180,000. I am not sure whether the original militia amount to more than 80,000.—If they amount to 80,000, that would be 260,000 men, besides all the regulars engaged in our line. Now is it fair to pick out all the punishments recorded in all the newspapers you can find, without presenting at the same time to public observation the number of persons who are subject to the military code? Is it the course of proceeding that would be followed by a man who had no improper object in view?—I should say, even on the statement, that it would not—but this is only the introduction to the libel—this is only the theme on which the libeller afterwards discourses—hear how he proceeds; "The attorney-general said what was very true; these aggressors have certainly not been dealt with as Buonaparté would have treated his refractory troops."

Why, in the outset, compare the treatment of the British forces with those of Buonaparté. Does the writer mean to desire of government to abolish the British military code, and substitute that of Buonaparté—to propose that we should adopt laws by which men are dragged from their families and homes, and obliged against their will to enter the ranks of the army? Surely! surely! if his proposal is to substitute the code he prefers for our own, I should be wanting in my duty if I did not dare to stand up to prosecute the man who had published a paper recommending such a plan.—Now how does he proceed?—"not as Buonaparté would have treated his refractory troops—nor indeed as refractory troops would be treated in any civilized country whatever, save and except only this country. "Here alone," (he proceeds with the libel) "in this land of liberty, in this age of refinement, by a people who with their usual consistency have been in the habit of reproaching their neighbours with the cruelty of their punishments, is still inflicted a species of torture, at least as exquisite as any that ever was devised by the infernal ingenuity of the inquisition." Why, military punishments are severe, most unquestionably:—but do you think

that it is the interest of those to whom the consideration of those punishments belongs, to render them more severe than is necessary? Is it not requisite that they should be attended with sufficient severity to insure immediate and prompt obedience to the orders issued to men from their superiors?—The libel goes on: "He, "as the attorney-general, justly says" Buonaparté "does not treat his refractory troops in this "manner." All this, you see, is by way of comparison, as to the manner of treating British soldiers and French troops. "There is "not a man in his ranks whose back is seamed "with the lacerating cat-o'-nine-tails; his "soldiers have never yet been brought up to "view one of their comrades stripped naked, "his limbs tied with ropes to a triangular "machine—his back torn to the bone by the "merciless cutting whiplash, applied by persons who relieve each other at short intervals, "that they may bring the full unexhausted "strength of a man to the work of scourging. "Buonaparté's soldiers have never yet with "tingling ears listened to the piercing screams "of a human creature so tortured—they "have never seen the blood oozing from the "rent flesh—they have never beheld a surgeon, "with dubious look, pressing the agonizing "victim's pulse, and calmly calculating, to an "odd blow, how far suffering may be extended, "until in its extremity it encroach upon life. "In short, Buonaparté's soldiers cannot form "any notion of that most heart-rending of all "exhibitions on this side hell, an English "military flogging." What is the tendency of all this, but to raise and exalt the French soldier, and to debase and degrade in his own eyes the English soldier? The writer proceeds—"Let it not be supposed that we intend "these remarks to excite a vague and indiscriminating sentiment against punishment "by military law:—no, when it is considered "that discipline forms the soul of an army, "without which it would at once degenerate "into a mob—when the description of persons "which compose the body of what is called "an army, and the situation in which it is "frequently placed, are also taken into account, it will, we are afraid, appear but "too evident that the military code must still "be kept distinct from the civil, and distinguished by greater promptitude and severity. "Buonaparté is no favourite of ours, God "wot; but if we come to balance accounts "with him on this particular head, let us see "how matters will stand."

I beg you to observe how this account is stated, and with what extreme reserve those acts of severity exercised by Buonaparté are introduced. "He recruits his ranks by force; "so do we."—Putting us upon an equality, as if the same degree of force was used to recruit the army in this country as in France,—“We "flog those we have forced; he does not. But, "it may be said, he punishes them in some "manner; that is very true. He imprisons "his refractory troops, occasionally, in chains;

"and, in aggravated cases, he puts them to "death;" lightly passing over the circumstances of his putting his refractory troops in chains, and sometimes punishing them with death. "But" he proceeds "any of these "severities is preferable to tying a human "creature up like a dog, and cutting his flesh "to pieces with whiplash. Who would not "go to prison for two years, or indeed for "almost any term, rather than bear the exquisite, the almost insupportable torment, "occasioned by the infliction of seven hundred "or a thousand lashes? Death is mercy compared with such sufferings." Gentlemen, if there is to be an alteration in our military code, it must be by adding to the number of cases in which death is inflicted; and if a proposal were made for adding to them, I should like to know in what terms of reproach the publishers of this libel would attack those who supported such a regulation. Then the writer goes into a statement of the manner in which this punishment is inflicted, which it would be very easy for him to do, with respect to any species of punishment on any offender. He says: "We give all credit to the wishes of "some of our great men; yet while any thing "remains to us in the shape of free discussion, "it is impossible we should sink into the "abject slavery in which the French people are "plunged. Although we do not envy the general condition of Buonaparté's subjects, we "really (and we speak the honest conviction "of our hearts) see nothing peculiarly pitiable "in the lot of his soldiers, when compared "with that of our own. Were we called upon "to make our election between the services, "the whiplash would at once decide us." So that you see, striking a balance between the supposed hardships in our army, and those which he states belong to the French army, he gives the decided preference to the condition of the soldiers in the army of the Corsican.

Gentlemen, can you hear this without indignation? Is it possible for any creature endowed with human reason, not to see that the tendency of this publication is to alienate and estrange the minds of the British soldiers from the service, and to disincline those who have not entered into the ranks, but who might be inclined to do so, from entering into such service? Can any thing be more mischievous than presenting to the public a comparison between the condition of a British and French soldier, and giving the preference to the latter? You will hear the libel read—the whole of it is equally offensive—every line has the same tendency; when you shall have heard it, I am sure you will entertain no doubt that its tendency is such as I have described it; and I am persuaded you will also hear from his lordship, for it will be his duty to state to you his opinion on the subject, that this is a most mischievous and seditious libel.

Henry Baldwin Baven, sworn.—Examined by Mr. Garrow. [Afterwards a Baron of the Exchequer.]

Have you got a certified copy of the affidavit filed at the Stamp-office?—I have.

Signed by the commissioners?—Yes, I have.

Did you see the commissioners sign it?—Yes, I did.

Mr. *Louten*.—The affidavit is sworn the 31st of December, 1807, by John Hunt and Leigh Hunt.

Have you got a printed newspaper with the title of "Examiner"?—Yes.

Does it, in other respects, conform to the description of that paper in the affidavit?—Yes.

Mr. *Garrow*.—Your lordship knows the act of parliament makes that sufficient evidence of the publication.

Lord *Ellenborough*.—Did you purchase it?—No.

Mr. *Garrow*.—We are only required to produce it..

Mr. *Brougham*.—I submit that nothing has been proved respecting Leigh Hunt; at least the conformity of the paper is not proved as far as regards Leigh Hunt—John Hunt is alone mentioned at the foot of the paper.

Mr. *Louten*.—The affidavit says that John Hunt is the printer.

Lord *Ellenborough*.—It is the affidavit of both.

Mr. *Brougham*.—The affidavit, by John Hunt and Leigh Hunt, I apprehend, brings home the fact of the property being their joint property: but the prosecutor has to prove another point; he has to prove that the paper produced is the paper whereof the property is in these two persons.

Lord *Ellenborough*.—We will read the provision in the act of parliament.

Mr. *Attorney General*.—The 9th section of the 38th Geo. III. Cap. 78 is in these words:

"And be it further enacted, That all such affidavits and affirmations as aforesaid shall be filed and kept in such a manner as the said commissioners shall direct, and the same, or copies thereof, certified to be true copies, as hereinafter is mentioned, shall, respectively in all proceedings, civil and criminal, touching any newspaper or other such paper as aforesaid, which shall be mentioned in any such affidavits or affirmations, or touching any publication, matter, or thing contained in any such newspaper or other paper, be received and admitted as conclusive evidence of the truth of all such matters set forth in such affidavits or affirmations as are hereby required to be therein set forth, against every person who shall have signed, and sworn, or affirmed such affidavits or affirmations, and shall also be received and admitted, in like manner, as sufficient evidence of the truth of all such matters against all and every person who shall not have signed, or sworn, or affirmed the same,

but who shall be therein mentioned to be a proprietor, printer, or publisher of such newspaper or other paper, unless the contrary shall be satisfactorily proved"—with a proviso that if any person should have delivered, previous to the publication of the paper to which the proceedings relate, an affidavit that he had ceased to be printer, &c., he should not be so deemed after such delivery.

This point was expressly decided in the case of the king against Hart and White.\*—There is a clause that says the production of a paper corresponding with the description in the affidavit, shall be *prima facie* evidence. Section 11 states:

Sect. XI. "And be it further enacted, That it shall not be necessary, after any such affidavit or affirmation, or a certified copy thereof, shall have been produced in evidence as aforesaid against the person who signed and made such affidavit, or are therein named according to this act, or any of them—and after a newspaper, or other such paper as aforesaid, shall be produced in evidence, intitled in the same manner as the newspaper or other paper mentioned in such affidavit or copy is intitled, and wherein the name or names of the printer and publisher, or printers and publishers, and the place of printing, shall be the same as the name or names of the printer and publisher or printers and publishers, and the place of printing, mentioned in such affidavit or affirmation, for the plaintiff, informant, or prosecutor, or person seeking to recover any of the penalties given by this act, to prove that the newspaper or paper to which such trial relates, was purchased at any house, shop, or office belonging to or occupied by the defendant or defendants, or any of them, or by his or their servants or workmen, or where he or they, by themselves or their servants or workmen, usually carry on the business of printing or publishing such paper, or where the same is usually sold.

Mr. *Brougham*.—My objection is, that the affidavit states John and Leigh Hunt to be the proprietors; and the question arises, whether the paper produced is the paper to which their affidavit refers? The paper only states John Hunt to be the printer, without any mention of Leigh Hunt.

Mr. *Attorney General*.—My learned friend loses sight of that which is the only support we have, I mean the act of parliament. The act of parliament says, that if a paper is produced corresponding with the description of the paper intended to be published, the production of that paper shall be evidence against the persons who made the affidavit, that it is their paper.

Lord *Ellenborough*.—As I understand the act, it makes, after the affidavit has been made, the publication of a paper with a corresponding title, *prima facie* evidence,—for it is no more,

and is liable to be rebutted.—that it is published by the person who is proprietor. It is only *prima facie* evidence. You may show to the contrary.

Mr. Attorney General.—The point was decided in the case of the King against Hart and White.

Lord Ellenborough.—What is the act?

Mr. Garrow.—The 38th Geo. 3rd, c. 78.

Mr. Brougham.—It is with great reluctance I press this. I wish to read two lines further, in order to suggest that there does appear to be the variance I have mentioned: "And be it further enacted, that it shall not be necessary, after a certified copy, &c."—Now we admit the title is the same.

Lord Ellenborough.—The printer and publisher are the same, though the other person is enrolled as a proprietor.—It most literally observes the prescription of the act of parliament.

The publication was read by Mr. Lowten.

### "ONE THOUSAND LASHES!!"

(From the Stamford News.)

"The aggressors were not dealt with as Buonaparté would have treated his refractory troops."

*Speech of the Attorney General.*

"Corporal Curtis was sentenced to receive ONE THOUSAND LASHES, but, after receiving two Hundred, was, on his own petition, permitted to volunteer into a regiment on foreign service.—William Clifford, a private in the 7th royal veteran battalion, was lately sentenced to receive ONE THOUSAND LASHES, for repeatedly striking and kicking his superior officer. He underwent part of his sentence by receiving seven hundred and fifty lashes, at Canterbury, in presence of the whole garrison.—A garrison court martial has been held on board the Metcalf transport, at Spithead, on some men of the 4th regiment of foot, for disrespectful behaviour to their officers." Two THOUSAND SIX HUNDRED LASHES were to be inflicted among them.—Robert Chillman, a private in the Bearstead and Malling regiment of local militia, who was lately tried by a court martial for disobedience of orders, and mutinous and improper behaviour while the regiment was embodied, has been found guilty of all the charges, and sentenced to receive EIGHT HUNDRED LASHES, which are to be inflicted on him at Chatham, to which garrison he is to be marched for that purpose.—*London Newspapers.*

"The Attorney-general said what was very true;—these aggressors have certainly not been dealt with as Buonaparté would have

treated his refractory troops; nor indeed as refractory troops would be treated in any civilized country whatever, save and except only this country. Here alone, in this land of liberty, in this age of refinement—by a people who, with their usual consistency, have been in the habit of reproaching their neighbours with the cruelty of their punishment—is still inflicted a species of torture, at least as exquisite as any that was ever devised by the infernal ingenuity of the Inquisition. No, as the attorney-general justly says, Buonaparté does not treat his refractory troops in this manner; there is not a man in his ranks whose back is seamed with the lacerating cat-o'-nine-tails; his soldiers have never yet been brought up to view one of their comrades stripped naked,—his limbs tied with ropes to a triangular machine,—his back torn to the bone by the merciless cutting whipcord, applied by persons who relieve each other at short intervals, that they may bring the full unexhausted strength of a man to the work of scourging. Buonaparté's soldiers have never yet with tingling ears listened to the piercing screams of a human creature so tortured: they have never seen the blood oozing from his rent flesh; they have never beheld a surgeon, with dubious look, pressing the agonized victim's pulse, and calmly calculating, to an odd blow, how far suffering may be extended, until in its extremity it encroach upon life. In short, Buonaparté's soldiers cannot form any notion of that most heart-rending of all exhibitions on this side hell,—an *English military flogging.*

"Let it not be supposed that we intend these remarks to excite a vague and indiscriminating sentiment against punishment by military law:—no, when it is considered that discipline forms the soul of an army, without which it would at once degenerate into a mob;—when the description of persons which compose the body of what is called an army, and the situations in which it is frequently placed, are also taken into account, it will, we are afraid, appear but too evident, that the military code must still be kept distinct from the civil, and distinguished by greater promptitude and severity. Buonaparté is no favourite of ours, God wot—but if we come to balance accounts with him on this particular head, let us see how matters will stand. He recruits his ranks by force—so do we. We flog these whom we have forced—he does not. It may be said he punishes them in some manner; that is very true. He imprisons his refractory troops—occasionally in chains—and, in aggravated cases, he puts them to death. But any of these severities is preferable to tying a human creature up like a dog, and cutting his flesh to pieces with whipcord. Who would not go to prison for two years, or indeed for almost any term, rather than bear the exquisite, the almost insupportable

"torment occasioned by the infliction of seven hundred or a thousand lashes? Death is mercy compared with such sufferings. Besides, what is a man good for after he has the cat-o'-nine-tails across his back? Can he ever again hold up his head among his fellows? One of the poor wretches executed at Lincoln last Friday, is stated to have been severely punished in some regiment. The probability is, that to this odious, ignominious flogging, may be traced his sad end; and it cannot be doubted that he found the gallows less cruel than the halberts. Surely, then, the attorney-general ought not to stroke his chin with such complacency, when he refers to the manner in which Buonaparté treats his soldiers. We despise and detest those who would tell us that there is as much liberty now enjoyed in France as there is left in this country. We give all credit to the wishes of some of our great men; yet while any thing remains to us in the shape of free discussion, it is impossible that we should sink into the abject slavery in which the French people are plunged. But although we do not envy the general condition of Buonaparté's subjects, we really (and we speak the honest conviction of our hearts) see nothing peculiarly pitiable in the lot of his soldiers when compared with that of our own. Were we called upon to make our election between the services, the whipcord would at once decide us. No advantage whatever can compensate for, or render tolerable to a mind but one degree removed from brutality, a liability to be lashed like a beast. It is idle to talk about rendering the situation of a British soldier pleasant to himself, or desirable, far less honourable, in the estimation of others, while the whip is held over his head—and over his head alone, for in no other country in Europe (with the exception perhaps, of Russia, which is yet in a state of barbarity) is the military character so degraded. We once heard of an army of slaves, which had bravely withstood the swords of their masters, being defeated and dispersed by the bare shaking of the instrument of flagellation in their faces. This brought so forcibly to their minds their former state of servitude and disgrace, that every honourable impulse at once forsook their bosoms, and they betook themselves to flight and to howling. We entertain no anxiety about the character of our countrymen in Portugal, when we contemplate their meeting the bayonets of Massena's troops,—but we must own that we should tremble for the result, were the French general to dispatch against them a few hundred drummers, each brandishing a cat-o'-nine-tails.

Mr. Attorney General.—There is an allegation that the 7th royal veteran battalion is a battalion in the army of our lord the king. I can call any one to prove it.

Mr. Alexander Mackay, sworn.—Examined by Mr. Richardson.

I believe you are a clerk in the War-office?—I am.

Is the 7th royal veteran battalion part of the army of our lord the king?—I consider it to be so.

Is it so treated and regarded in the service?—It is.

Mr. Attorney General.—You consider it to be so, just as we now consider you to be standing in the box?—Yes.

Is the 4th regiment of foot part of the army?—It is.

Mr. Henry Longlands.—Examined by Mr. Attorney General.

The Beerstead and Malling regiments of local militia, are they part of the army?—They are.

You are deputy-adjutant-general for the local militia?—I am.

Mr. Brougham.—I submit that the attorney-general has not proved the first count by the evidence he has produced.—The first count states that the defendants did compose, print, and publish.

Lord Ellenborough.—He need not prove all—proof of composing is not necessary. The distinction runs through all indictments: where you charge that the party did, or caused the thing to be done, if you prove either, it is enough.

Mr. Brougham.—This is different; the first count says, they composed, printed, and published; which must be taken to mean that they composed, and then printed and published their composition.

Mr. Attorney General.—In the King v. Vere it was held to be sufficient to prove either.

Lord Ellenborough.—It is not a variance.

#### DEFENCE.

Mr. Brougham.—May it please your lordship, gentlemen of the jury;—In rising to support the cause of these defendants, I feel abundantly sensible of the difficulties under which they labour. It is not that they have to contend, with such unequal force on my part, against the talents, and learning, and the high influence of the office of the attorney-general; nor is it merely that they stand in the situation of defendants prosecuted by the crown, for in ordinary cases they would have the common presumption of innocence to operate in their favour:—but the hardship of their case originates in the nature of the charge on which they are brought before you—a charge of libel, at a time when the licentiousness of the press has reached to a height which it certainly never attained in any other country, nor even in this at any former period. That licentiousness, indeed, has of late years appeared to despise all the bounds which had once been prescribed to the attacks on private

character, inasmuch that there is not only no personage so important or exalted—for of that I do not complain—but, no person so humble, harmless, and retired, as to escape the defamation which is daily and hourly poured forth by the venal crew, to gratify the idle curiosity, or still less excusable malignity, of the public: to mark out, for the indulgence of that propensity, individuals retiring into the privacy of domestic life—to hunt them down, and drag them forth as a laughing-stock to the vulgar, has become in our days, with some mea, the road even to popularity; but with multitudes, the means of earning a base subsistence. Gentlemen, the nature and the causes of this evil it is unnecessary for me to point out. Indeed, I am far from saying that there is nothing to extenuate it; I am ready even to admit that this abuse of the press, in defaming private characters, does derive no small apology from the insatiable love of publicity which preys upon a great part of the community; and leads them scarcely to value existence itself, unless it is passed in the eyes of the world, and to care but little what they do, so they be only stared at, or talked of. It furnishes somewhat of excuse too, that the public itself is insatiable in its thirst for slander; swallows it with indiscriminate avidity; and, liberal at least in its patronage of this species of merit, largely rewards those whom it sends forth to pander for those depraved appetites. But, in whatever way arising, or however palliated, the fact of the abuse of the press is certain, and the consequences are fatal to the press itself; for the licentiousness of which I complain has been the means of alienating the minds of those who had ever stood forward as its fastest friends and its firmest defenders; it has led them to doubt the uses of that which they have seen so perverted and abused. It has made them, instead of blessing “the useful light” of that great source of improvement, see in it only an instrument of real mischief, or doubtful good:—and when they find, that instead of being kept pure, for the instruction of the world—instead of being confined to questioning the conduct of men in high situations, canvassing public measures, and discussing great general questions of policy; when they find that, instead of such, its legitimate objects, this inestimable blessing has been made subservient to the purposes of secret malice, perverted to the torture of private feelings, and the ruin of individual reputation—those men have at last come to view it, if not with hostility, at least with doubtful friendship, and relaxed zeal for its privileges. It is no small aggravation of this prejudice that the defendants came into court to answer this charge after other libels of a more general description have been published and prosecuted; after those, to which the attorney-general had so forcibly alluded in the opening of this case, had so lately been brought before the Court, and the authors and circulators convicted.

At first sight, and upon merely stating the subject of this publication, it is but natural for you to imagine that there is some similarity between other cases and the present one; and that a publication on the general subject of military punishment (which is the only point of resemblance), belongs to the same class of libels with those so anxiously alluded to by my learned friend,—with those particularly for which Mr. Cobbett, and probably some others, are suffering the sentence of the law. The attorney-general did not put these circumstances in the back ground; he was anxious to draw a parallel between this case and the case of Mr. Cobbett: it will be unnecessary for me to follow this comparison; all I shall say in the outset is, that I confidently predict, I shall not proceed far before I shall have convinced you, gentlemen, that light is not more different from darkness than the publication set forth in this record is different from all, and each, of the former publications brought before the Court by the attorney-general for conviction, and now again brought forward for argument. The consequence of all these prepossessions, in whatever way arising, is, I will not say fatal, but extremely hurtful to these defendants. It places them in a torrent of prejudice, in which they would in vain have attempted, and I should not have counselled them to stand, had they not rested on the firm footing of the merits of their individual case, and the confidence that his lordship and you will cheerfully stretch forth an helping arm in the only way in which you can help them; in the only way in which they ask your aid—that you will do strict justice between the crown and them, by entering into an examination of their single individual case. Gentlemen, you have to try whether the particular publication, set forth in this record, has manifestly, upon the bare appearance of it, been composed and published with the evil intention, and with the purpose and hurtful tendency alleged in the information. If their intention has apparently been good; or, whether laudable or not, if it has been innocent, and not blameworthy; then, whatever you may think of the opinions contained in the work—even though you may think them utterly false and unfounded—in whatever light you may view it critically as a piece of composition—though you may consider the language as much too weak or as far too strong for the occasion—still if you are convinced there is nothing blameable in the intention which appears to have actuated the author and publisher—(for I will take the question on the footing that the author himself is before you—though the evidence, on the face of it, bears me out in distinctly asserting that these defendants did not write this article, but copied it from another work which they particularly specify)—yet, in order to argue the question more freely, I will suppose it is the case of the original composer, which you are now to



try (and I am sure my learned friend cannot desire me to meet him on higher or fairer ground)—I say then, that if you are not convinced—if, upon reading the composition attentively, you are not, every one of you, fully and thoroughly convinced, that the author had a blameable, a most guilty intention in writing it, and that he wrote it for a wicked purpose, you must acquit those defendants who republished it. This, gentlemen, is the particular question you have to try—but I will not disguise from you, that you are now trying a more general and important question than this. You are now to determine, whether an Englishman still enjoys the privilege of freely discussing public measures—whether an Englishman still possesses the privilege of impeaching (for if he has a right to discuss, he has a right to espouse whichever side his sentiments lead him to adopt, and may speak or write against, as well as for)—whether he has still a right to impeach, not one individual character, not one or two public men, not a single error in policy, not any particular abuse of an established system? I do not deny that he has the right to do all this, and more than this, but it is not necessary for me now to maintain it. But the question for you to try is, whether an Englishman shall any longer have the power of making comments on a system of policy, of discussing a general, I had almost said an abstract political proposition—of communicating to his countrymen his opinion upon the merits, not of a particular measure, or even a line of conduct pursued by this or that administration (though no man ever dreamt of denying him this also), but of a general system of policy, which it has pleased the government to adopt at all times:—Whether a person, devoted to the interests of his country, warm in his attachment to its cause, vehemently impelled by a love of its happiness and glory, has a right to endeavour, by his own individual exertions, to make that perfect which he so greatly admires, by pointing out those little defects in its constitution which are the only spots whereupon his partial eyes can rest for blame:—Whether an Englishman, anxious for the honour and renown of the army, and deeply feeling how much the safety of his country depends on the perfection of its military system, has a right to endeavour to promote the good of the service, by showing wherein the present system is detrimental to it, by marking out for correction those imperfections which bear, indeed, no proportion to the general excellence of the establishment, those flaws which he is convinced alone prevent it from attaining absolute perfection?—Whether a person, anxious for the welfare of the individual soldier, intimately persuaded that on the feelings and the honour of the soldier depend the honour and glory of our arms; sensible that upon those feelings and that honour hinges the safety of the country at all times, but never so closely as at present—whether, imbued with such senti-

ments, and urged by these motives, a man has not a right to make his opinions as public as is necessary to give them effect?—Whether he may not innocently, nay laudably, seek to make converts to his own views, by giving them publicity, and endeavour to realize his wishes for the good of the state, and the honour of its arms, by proving, in the face of his fellow-citizens, the truth of the doctrines to which he is conscientiously attached? These, gentlemen, are the questions put to you by this record; and your verdict, when it shall be entered upon it, will decide such questions as these.

Gentlemen, it is, I am persuaded, known to all of you, that, for many years past, the anxious attention of the government of this country has been directed (at times, indeed, to the exclusion of all other considerations) to the improvement of our military establishment. It would be endless, and it would be unnecessary for me to enter into the various projects for its improvement, which from time to time have been entertained by our rulers, and adopted or rejected by the legislature: it is enough that I should state, in one short sentence, that all those plans have had common objects—to protect and benefit the private soldier, to encourage the recruiting of the army, and to improve the character of those who compose it, by bettering the condition of the soldier himself. In the prosecution of these grand leading objects, various plans have been suggested by different statesmen of great name; plans which I need not particularize, but to some of which, in so far as they relate to the present information, it is necessary that I should direct your attention. One of the chief means suggested for improving the condition of the soldier, is shortening the duration of his service; and upon that important subject it is unnecessary for me to use words of my own, when I have, in a publication which is before the world, and I dare say has been before you (at least you cannot be unacquainted with the name and the fame of the author), that which better expresses my sentiments than any language I could use myself. The arguments are so forcibly stated, and the subject is altogether placed in so luminous a point of view, that it is better for me to give them in the words of the respectable writer, the gallant officer I have alluded to. It is sir Robert Wilson, gentlemen, whose presence here as a witness, should it be necessary to call him, prevents me from saying, so strongly as I could wish, what, in common with every one, I do most sincerely feel—that there is not, among all the brave men of whom the corps of officers in the British army is composed, one, to whom the country, considering his rank and the time of his service, is more indebted—one who has more distinguished himself by his enthusiastic, I had almost said romantic, love of the service—one who has shown himself a more determined, I may really say personal, enemy of the ruler

of France, or a faster friend to the cause and the person of his own sovereign, and of his royal allies.—This gallant officer, in the year 1794, published a tract “On the means of improving and re-organizing the Military Force of this Empire.”—It was addressed to Mr. Pitt, then minister of the country, and whose attention, as well as that of the author, was at that time directed to whatever was likely to improve our military system—to encourage the obedience, and exalt the character of the soldier already in the army, and to promote the recruiting of it from among those who had not yet entered into the service. He mentions a great variety of circumstances which deter men from enlisting, and render those who do enter of less value to the profession. Among others, he mentions the term—the duration of their service. He says, in a language powerful indeed, and strong, but any thing rather than libellous—“It is strange that in a free country, a custom so repugnant to freedom, as enlisting for life, and to the particular character of the British constitution, should ever have been introduced; but more singular that the practice should have been continued after every other nation in Europe had abandoned it as impolitic, and as too severe an imposition upon the subject.”—“If in those countries (he proceeds) where the inferior orders of society are born in vassalage, and where the will of the sovereign is immediate law, this power has been relinquished, in order to incline men voluntarily to enlist, surely there is strong presumptive evidence that the general interests of the service are improved, instead of being injured by this more liberal consideration.” He then goes on to illustrate the same topic in terms still more expressive of the warmth of his feelings upon so interesting a question: “The independence of an Englishman,” says he, “naturally recoils at the prospect of bondage, which gradually produces discontent against the bent even of inclination.” “How many men,” he adds, in still more glowing expressions—but which I am far from blaming—for I should have held him cheap indeed, if, instead of giving vent to his sentiments in this free and appropriate manner, he had offered them as coldly and dryly as if he were drawing out a regimental return.—“How many men are there who have now not the faintest wish to leave their own estates, even for a journey into another county, but who, if restrained by any edict from quitting England, would find this island too narrow to contain them, would draw their breath, convulsively as if they craved free air, and feel all the mental anguish of a prisoner in a dungeon? What is the inference to be now fairly drawn from the perseverance in the system of enlisting for life? Is it not that the British service is so obnoxious and little conciliating that, if the permission to retire were accorded, the ranks would be altogether abandoned, and the skeleton only remain, as an eternal and mournful monument of the wretch-

edness of a soldier's condition?—Is it not a declaration to the world, that the service is so ungrateful to the feelings of the soldiery, that when once the unfortunate victim is entrapped, it is necessary to secure his allegiance by a perpetual state of confinement?”—He then advances, in the course of his inquiry, to another topic; and in language as strong—as expressive of his honest feelings—and therefore as appropriate and praiseworthy—he talks of the service in the West-India islands, and even goes so far as to wish those colonies were abandoned. I am not disposed to follow him in this opinion—I cannot go so far:—But God forbid I should blame him for holding it—or that, for making this opinion public, I should accuse him of having written a libel on that service, of which he is at once the distinguished ornament and zealous friend.—It might bear, perhaps, an insinuation that such a topic was inflammatory—that it had a tendency to excite discontent among the soldiers—and to deter men from entering into the service. But far from imputing that to the gallant officer, I respect him the more for publishing a bold and downright opinion—for expressing his feelings strongly—it is the best proof he felt keenly. He proposes no less than that the West-India islands should be given up, in order to improve our means of defence at home. He says, “It is, however, to be hoped, that the day is not remote, when our colonies shall cease to be such a claim upon the active population of this country: that charnel-house must be closed for ever against the British troops. The soldier who dies in the field is wrapped in the mantle of honour, and the pall of glory is extended over his relatives; but in a warfare against climate, the energy of the man is destroyed before life is extinguished; he wastes into an inglorious grave, and the calamitous termination of his existence offers no cheering recollection to relieve the affliction of his loss.”—Did sir Robert Wilson mean to excite the brave and ill-fated regiments to mutiny and revolt who were already enclosed in those charnel-houses?—or did he mean to deter persons from enlisting in those regiments, who might otherwise have been inclined to join them? Did he mean to address any of the regiments under actual orders for the West-India service, and to excite revolt among them—by telling every one who read the passage I have cited, that which it so forcibly puts to all soldiers under such orders—“Whither are you going?—You are rushing into a charnel-house!” Far be it from me to impute such motives—it is impossible! The words I have read are uttered in the discussion of a general question; a question on which he speaks warmly, because he feels strongly. And pursuing the same course of reasoning in the same expressive style, he comes to another and an important part, both of his argument and of the question in which we are now engaged. In considering the nature of the tenure by which a soldier wears

his sword; in considering that honour is to him what our all is to every body else—he views several parts of our military system as clashing in some sort with the respect due to a soldier's character—and, fired with a subject so near his heart, he at once enters into the question of military punishments—paints in language not at all weaker nor less eloquent than that of the publication before you—in language that does him the highest honour, the evils that result from the system of flogging, as practised in our army. He says, “The second, and equally strong check to the recruiting of the army, is the frequency of corporal punishment.” Proceeding to enlarge on this most interesting point, in the course of his observations he uses such expressions as these:—After judiciously telling us, that “it is in vain to expect a radical reform, until the principle of the practice is combated by argument, and all its evil consequences exposed by reasoning,” he adds this assertion, for which every one must give him credit:—“Be this, however, as it may, I feel convinced that I have no object but the good of the service.”—He says, that “sir Ralph Abercrombie was also an enemy to corporal punishments for light offences: his noble and worthy successor, whose judgment must have great influence; lord Moira,—general Simcoe—and almost every general officer in the army, express the same aversion continually;—but they have no power of interference.”—Of that interference then he thinks there is no prospect, unless by reason and argument, and by freely discussing the opinions of the country and the legislature—a proposition to which all of us must readily assent. And he thus pursues:—“I feel convinced that I have no object but the good of the service, and, consequently, to promote the commander-in-chief's views, and that my feelings are solely influenced by love of humanity, a grateful sense of duty to brave men, and not by a false ambition of acquiring popularity”—A motive which I am sure no one will impute to him.—“If (he adds) I did not think the subject of the most essential importance, no motive should induce me to bring it forward—if I was not aware that, however eager the commander-in-chief was, to interpose his authority, the correction of the abuse does not altogether depend upon his veto, and cannot, with due regard to the peculiar circumstances of his situation, be required to emanate abruptly from him. My appeal is made to the officers of the army and militia, for there must be no marked discrimination between these two services, notwithstanding there may be great difference in their different modes of treating the soldiery. I shall sedulously avoid all personal allusions—the object in view is of greater magnitude than the accusation of individual malefactors; I shall not enter into particulars of that excess of punishment which has, in many instances, been attended with the most fatal consequences.—I will not, by quoting examples, represent a

picture in too frightful a colouring for patient examination.” He then says, “The present age is a remarkable epoch in the history of the world;—civilization is daily making the most rapid progress, and humanity is triumphing hourly over the last enemies of mankind; but whilst the African excites the compassion of the nation, and engages the attention of the British legislature, the British soldier, their fellow-countryman, the gallant, faithful protector of their liberties, and champion of their honour, is daily exposed to suffer under the abuse of that power with which ignorance or a bad disposition may be armed.”—“There is no mode of punishment so disgraceful as flogging, and none more inconsistent with the military character, which should be esteemed as the essence of honour and the pride of manhood: but when what should be used but in very extreme cases, as the *ultimum supplicium*, producing the moral death of the criminal, becomes the common penalty for offences in which there is no moral turpitude, or but a petty violation of martial law, the evil requires serious attention.”—Here he appeals with a proud and exulting recollection to the practice of the regiment in which he had begun his military life.—“Educated,” says he, “in the 15th light dragoons, I was early instructed to respect the soldier: that was a corps before which the triangles were never planted;” meaning the triangles against which men are tied up when they receive the punishment of flogging. “There,” he adds, in the same language of glowing satisfaction, contrasting the character of his favourite corps with that debasement which the system of flogging elsewhere engenders—“There,” he exclaims, —“each man felt an individual spirit of independence; walked erect, as if conscious of his value as a man and a soldier—where affection for his officer, and pride in his corps, were so blended, that duty became a satisfactory employment, and to acquire, for each new distinction, the chief object of their wishes. With such men every enterprise was to be attempted, which could be executed by courage and devotion, and there was a satisfaction in commanding them which could never have been derived from a system of severity.” He proceeds, “There is no maxim more true than that cruelty is generated in cowardice, and that humanity is inseparable from courage. The ingenuity of officers should be exercised to devise a mode of mitigating the punishment, and yet maintaining discipline. If the heart be well disposed, a thousand different methods of treating offences will suggest themselves; but to prescribe positive penalties for breaches of duty is impossible, since no two cases are ever exactly alike. Unfortunately, many officers will not give themselves the trouble to consider how they can be merciful; and if a return was published of all regimental punishments within the last two years, the number would be as much a subject of astonishment as regret.—I knew a colonel of Irish militia,

happily now dead, who flogged, in one day, seventy of his men, and I believe punished several more the next morning; but, notwithstanding this extensive correction, the regiment was by no means improved. Corporal punishments never yet reformed a corps; but they have totally ruined many a man who would have proved, under milder treatment, a meritorious soldier. They break the spirit, without amending the disposition; whilst the lash strips the back, despair writhes round the heart, and the miserable culprit, viewing himself as fallen below the rank of his fellow-species, can no longer attempt the recovery of his station in society. Can the brave man, and he endowed with any generosity of feeling, forget the mortifying vile condition in which he was exposed? Does not, therefore, the cat-o'-nine-tails defeat the chief object of punishment, and is not a mode of punishment too severe, which for ever degrades and renders abject? Instead of upholding the character of the soldier, as entitled to the respect of the community, this system renders him despicable in his own eyes, and the object of opprobrium in the state, or of mortifying commiseration."

He is now about to touch upon a topic which I admit to be of some delicacy. It is one of the topics introduced into the composition before you:—but a man of principle and courage, who feels that he has a grave duty to perform, will not shrink from it, even if it be of a delicate nature, through the fear of having motives imputed to him by which he was never actuated, or lest some foolish persons may accuse him of acting with views which never swayed him. Accordingly, sir Robert Wilson is not deterred from the performance of his duty by such childish apprehensions; and, having gone through all his remarks, of which I have read only a small part, and having eloquently, feelingly, and most forcibly summed it up in the passage I have just quoted, he says: "It is a melancholy truth, that punishments have considerably augmented—that ignorant and fatal notions of discipline have been introduced into the service, subduing all the amiable emotions of human nature. Gentlemen who justly boast the most liberal education in the world, have familiarized themselves to a degree of punishment which characterizes no other nation in Europe."—"England," (he adds, pursuing the same comparative argument on which so much has this day been said)—"England should not be the last nation to adopt humane improvements;" and then, coming to the very point of comparison which has been felt by the attorney-general as the most offensive, sir R. Wilson says: "France allows of flogging only in her marine; for men confined together on board ship require a peculiar discipline, and the punishment is very different from military severity. The Germans make great criminals run the gauntlet;" thus illustrating the principle that in no country, save and ex-

cept England alone (to use the words of those defendants), is this mode of punishment by flogging adopted.

Gentlemen, it is not from the writings of this gallant officer alone that I can produce similar passages, though, perhaps, in none could I find language so admirable and so strong as his. I shall trouble you, however, with no more references, excepting to an able publication of another officer, who is an ornament to his profession, and whose name, I dare to say, is well known amongst you, I mean brigadier-general Stewart, of the 95th regiment; the brother of my lord Galloway. This work was written while the plans, which I have already mentioned, were in agitation for the improvement of the army; and the object of it is the same with that of sir R. Wilson—to show the defects of the present system, and to point out the proper remedies. "Without (he begins) a radical change in our present military system, Britain will certainly not long continue to be either formidable abroad, or secure at home." This radical change in our system is merely that which I have already detailed. He says, after laying down some general remarks, "If this view of the subject be correct, how will the several parts of our present military system be reconciled to common sense, or to any insight into men and things?" He then mentions the chief defects in the system, such as perpetuity of service, and the frequency of corporal punishments; and in discussing the latter subject, he says, "No circumstance can mark a want of just discrimination more than the very general recurrence, in any stage of society, to that description of punishment which, among the same class of men, and with the alteration of the profession alone, bears a stamp of infamy in the estimate of every man.—The frequent infliction of corporal punishment in our armies tends strongly to debase the minds and destroy the high spirit of the soldiery. It renders a system of increasing rigour necessary; it deprives discipline of honour, and destroys the subordination of the heart, which can alone add voluntary zeal to the cold obligations of duty. Soldiers of naturally correct minds, having been once punished corporally, generally become negligent and unworthy of any confidence. Discipline requires the intervention of strong acts to maintain it, and to impress it on vulgar minds: punishment may be formidable, but must not be familiar: generosity or solemn severity must at times be equally resorted to: pardon or death have been resorted to with equal success; but the perpetual recurrence to the infliction of infamy on a soldier by the punishment of flogging, is one of the most mistaken modes for enforcing discipline which can be conceived."—And then, alluding to the same delicate topic of comparison, which, somehow or other, it does appear no man can write on this subject without introducing—I mean the comparative state of

the enemy's discipline and our own, he says: "In the French army a soldier is often shot, but he rarely receives corporal punishment; and in no other service is discipline preserved on truer principles." Gentlemen, I like not the custom, which is too prevalent with some men, of being over-prone to praise the enemy—of having no eyes for the merits and advantages of their own country, and only feeling gratified when they can find food for censure at home; while abroad all is praise-worthy and perfect.—I love not this propensity to make such a comparison; however, it is sometimes absolutely necessary, though it may always be liable to abuse:—but in an officer like general Stewart or sir Robert Wilson, it has the merit not only of being applicable to the argument, but in those men who have fought against that enemy, and who, in spite of his superior system, have beaten him (as beat him we always do, when we meet him on any thing like fair terms), in such men it has the grace of liberality as well as the value of truth—and it not only adds a powerful reason to their own, but shows them to be above little paltry feuds—shows them combating with a manly hostility, and proves that the way in which they choose to fight an enemy, is like soldiers in the field, and not by effeminately railing at him. In the French army, general Stewart says, a soldier is often shot, but he rarely receives corporal punishment—and "in no other service is discipline preserved on truer principles." He says, "I know the service—I have had occasion to see it in practice—I have served with Austrians, Prussians, and Swedes—but in no service is discipline preserved on truer principles than in the French; and, therefore, it is that I quote the example of the French, whose discipline is preserved on principles too true, alas, for our ill-fated allies. It is, therefore, I quote the French army, and in order to show that the change I recommend in our own, is necessary for the perfection of its discipline, and to save us from the fate of those allies."

Such are the opinions of these gallant officers—but whether they are right or wrong I care not—such are the opinions of other brave and experienced officers, expressed in language similar to that which you have heard; in such terms as they deemed proper for supporting the opinions they held. Do I mean to argue, because these officers have published what is unfit and improper, that, therefore, the defendants have a right to do the same? Am I foolish enough? Do I know so little of the respect due to your understandings? Am I so little aware of the interruption I should instantly and justly meet from the learned and noble judge, who presides at this trial, were I to attempt urging such a topic as this? Do I really dare to advance what would amount to no less than the absurd, the insane proposition, that if one man publishes a libel, another man may do so too? On the contrary, my whole argument is at an end, if these are libels, if

general Stewart and sir Robert Wilson have exceeded the bounds of propriety, and those passages which I have read from their works, are libels, the publication by them would form not only no excuse for the defendants, but would be an aggravation of their fault, if I, their counsel, had ventured, in defending one libel, to bring other libels before you. But it is because I hold, and you must too, that these officers are incapable of a libellous intention—because you well know that these officers, when they wrote in such terms, were incapable of the design of sowing dissension among the troops, and deterring men from entering into the army—it is because you know that, of all the men in this Court, and in this country, there are no two persons who are more enthusiastically attached to this country—it is because you know, as well as I do, that no two men in England are more entirely devoted to the interests of the British army, or bear a deadlier hate to all its enemies—it is because you must feel that there is not an atom of pretext for charging them with such wicked intentions, or for accusing them of a libellous publication—it is for this reason, and for this alone, that I have laid before you what they have thought and written upon the subject matter of the composition which you are now trying. I entertain no small confidence that you are prepared to go along with me, in my conclusion, that, if they could publish such things, without the possibility of any man accusing them of libel, the mere fact of these things being published is no evidence of a wicked or seditious intention:—that you are, therefore, prepared to view the publication on its own merits; and, considering how others, who could not by possibility be accused of improper motives, have treated the same subject, you will feel it your duty to acquit the defendants of evil intention, if they shall appear to have handled it in a similar manner.

Gentlemen, I entreat you now to look a little towards the composition itself on which the attorney-general has commented so amply. With respect to the motto, which is taken from an eloquent address of his to a jury upon a former occasion, there is nothing in that, which makes it necessary for me to detain you. In whatever way these words may have originally been spoken, and however the context may have qualified them, even if they bore originally a meaning quite different from that which in their insulated state they now appear to have—I apprehend, that a person assuming, as is the fashion of the day, a quotation from the words of another as a text, may fairly take the passage in whatever sense suits his own purpose. Such at least has been the practice, certainly, from the time of the *Spectator*—I believe much earlier; nor can the compliance with this custom prove any intention good or bad.—A writer takes the words which he finds best adapted to serve for a text, and makes them his motto: some take a line, and even twist it to another meaning, a sense quite op-

posite to its original signification; it is the most common device, a mere matter of taste and ornament, and is every day practised.

Let us now come to the introduction, which follows the text or motto. The writer, meaning to discuss the subject of military punishments, and wishing to offer his observations on the system of punishment adopted in our army—in order to lay a ground-work for his argument, and in case any reader should say, "You have no facts to produce, this is all mere declamation"—for the purpose of securing such a ground-work of fact as should anticipate this objection, and show that these military punishments were actually inflicted in various instances, and in order to prove from those instances the necessity of entering into the inquiry, he states fairly and candidly several cases of the punishments which he is going to comment upon. He says, "Corporal Curtis was sentenced to receive one thousand lashes, but, after receiving two hundred, was on his own petition permitted to volunteer into a regiment on foreign service." Enough would it have been for the argument to have said, that corporal Curtis had been sentenced to receive one thousand lashes; he owns candidly that on receiving two hundred, he was allowed, and at his own request, to enter into a regiment on foreign service. Then he mentions the case of William Clifford, a private in the seventh royal veteran battalion, who was lately sentenced to receive one thousand lashes:—does he stop there? No, he adds the reason; and the reason turns out to be one which, if any thing can justify such a punishment, you will admit would be a justification. He adds, candidly, what makes against his own argument; he says it was "for repeatedly striking and kicking his superior officer." He adds, that he underwent part of his sentence, by receiving seven hundred and fifty lashes at Canterbury, in presence of the whole garrison. He next mentions another instance of some persons of the 4th regiment of foot, being sentenced to receive two thousand six hundred lashes—and, giving the reason, he says, it was "for disrespectful behaviour to their officers." He then states the case of Robert Chilman, a private in the Bearstead and Malling regiment of local militia, who was lately tried, this author tells us, by a court-martial "for disobedience of orders and mutinous and improper behaviour while the regiment was embodied."—His offence he thus sets forth almost as fully as if he was drawing up the charge—nay, I will venture to say the charge upon which the court-martial proceeded to trial, was not drawn up more strongly and distinctly; he subjoins to these facts, that his authorities are, the London Newspapers.

Having thus laid the foundation and ground-work of his reasoning, he comments upon the subject in words which, as they have been read twice over, once by the attorney-general and

once by Mr. Lowten, it will be unnecessary for me to repeat; I would only beg of you to observe, that, in the course of his argument, he has by no means departed from the rule of fairness and candour which he had laid down for himself in the outset. He brings forward that which makes against him, as well as that which makes for him, and he qualifies and guards his propositions in a way strongly indicative of the candour and fairness of his motives. After having stated his opinion in warm language, in language such as the subject was calculated to call forth—after having poured out his strong feelings in a vehement manner—(and surely you will not say that a man shall feel strongly, and not strongly express himself)—shall he be blamed for expressing himself as these two gallant officers have done, though, perhaps, in language not quite so strong? Having thus expressed himself, he becomes afraid of his reader falling into the mistaken notion of his meaning, which, notwithstanding the warning, it would seem the attorney-general has really fallen into, of supposing that he had been too much inclined to overlook the errors in the French system, and that he who had argued against our system, and in favour of the enemy's, might be supposed too generally fond of the latter; apprehensive of a mistake so injurious to him, and feeling that it was necessary for him to qualify his observation, in order to protect himself from such a misconception—he first says, "Let it not be supposed that we intend these remarks to excite a vague and indiscriminate sentiment against punishment by military law." You perceive, gentlemen, that before proceeding to guard his reader against the idea of his general partiality to the French system, he stops for the purpose of correcting another misrepresentation, another mistake of his meaning, into which also the attorney-general has repeatedly been betrayed this day. The writer, fearing lest he should not have guarded his reader, and especially his military reader, if he should have one, against the supposition of his being an enemy to military punishment in the general, states distinctly, that severe punishment is absolutely necessary in the army; and he proceeds to express himself in words which are nearly the same as those used by the attorney-general, for the purpose of showing that there was something enormous in attacking the system of corporal punishment. The attorney-general says, he is endeavouring to inflame the subjects of this country against the whole penal code of the army; he is endeavouring to take away the confidence of the soldier in those military regulations which must be enforced, while we have an army at all. All this is mere rhetoric, exactly so thought the author of this work. He was afraid some person might fall into the same mistake, and accordingly he warns them against this error; he says, "Let it not be supposed that we intend these remarks to excite a vague and indiscriminating sentiment

against punishment by military law: no; when it is considered that discipline forms the soul of an army, without which it would at once degenerate into a mob—when the description of persons which compose the body of what is called an army, and the situation in which it is frequently placed, are also taken into account, it will, we are afraid, appear but too evident that the military code must still be kept distinct from the civil, and distinguished by great promptitude and severity. Buonaparté is no favorite of ours, God wot!"—Then, with respect to the French mode of punishment and our own, he observes: "It may be said, he (Buonaparté) punishes them (his troops) in some manner. That is very true; he imprisons his refractory troops, occasionally in chains, and in aggravated cases he puts them to death." Is this not dealing fairly with the subject? Is this keeping out of sight, every thing that makes against his argument, and stating only what makes for it? Is he here mentioning the French military punishments, to prove that we ought to abandon the means of enforcing our military discipline? No, he does not argue so unfairly, so absurdly. His argument did not require it: he states, that the French punish their soldiers in a manner which I have no doubt some will think more severe than flogging: he states, that Buonaparté punishes his refractory troops with chains, and with the highest species of all human punishment—with death. This is exactly the argument of the defendants, or of the author of this composition; and it is the argument of all those who reprobate the practice of flogging. They contend, that he (Buonaparté) does not, and that we ought not to flog soldiers; but that he punishes them with chains or death, and so ought we. They maintain, that for those offences for which one thousand lashes are inflicted, and many of the first authorities in this country maintain, and always have maintained—that death itself should be inflicted—but not flogging—that the more severe, but more safe and appropriate punishment is to be preferred. The argument is not used out of compassion to the soldier, not for the purpose of taking part with him. He does not tell him who has been guilty of mutiny, "Your back is torn by the lash, you are an injured man, and suffering unmerited hardships—you, who have kicked and beat your officer, ought not to be punished in so cruel a way, as by being tied to the triangles and lacerated with whips—this is not what he tells the soldier. No: he says—"The punishment you receive, is an improper punishment altogether, because it is hurtful to military discipline, because it wounds the feelings of the soldier, and degrades him in his own estimation, because it ruins irretrievably many a man who might be reclaimed from irregular courses, and saves the life only, without retaining the worth of him who, like you, has committed the highest offences: therefore such a punishment is in no instance fit to be inflicted.

But do not think that you are to get off without the severest punishment—you, who have been guilty of mutiny: do not think that military punishments ought not to be more severe than the civil; my opinion, indeed, is, that you ought not to be flogged, because there are reasons against that practice, wholly independent of any regard for you; but then I think that you ought to be confined in chains, or put to death."—It is not tenderness towards the soldier, it is not holding up his grievances as the ground for mutiny; it is a doctrine which has for its object the honour of all soldiers: it proceeds from a love of the military service; it is calculated to raise that service, and, by raising it, to promote the good of the country. These are the motives, these are the views of this train of argument. Instead of holding out the idle dream, that the soldier ought not to be punished, he addresses himself to the soldier, solely on account of the system of which he forms a part; solely on account of the effects which his punishment may produce on the army: but as to the individual soldier himself, he holds the very language of severity and discipline; he tells him in pretty plain, nay in somewhat harsh terms, that strictness is necessary in his case, and that he must be treated far more rigorously than any other class of the community. Furthermore, he tells him, that a severer punishment than even flogging is requisite, and that, instead of being scourged, he ought to be imprisoned for life, or shot. He then goes to another topic—but it is almost unnecessary to proceed farther with the qualifications of his opinion: he says, "We despise and detest those who would tell us, that there is as much liberty now enjoyed in France as there is left in this country." Is this the argument, is this the language of a person who would hold up to admiration what our enemies do, and fix the eye of blame only on what happens at home? Is this the argument, from which it is to be inferred, that he went over to pry out the blessings enjoyed by our enemies in order to stir up discontent among ourselves? If such had been his intention, was this vehement expression of contemptuous indignation against those who are over-forward to praise the French, likely to accomplish such an intention? Surely such expressions were more than his argument required. He goes out of his way to reprobate men of unpatriotic feelings; men whose hearts are warm towards the enemies of their country. It was the gist of his argument to show that the French discipline being superior to ours (as in the opinion of sir Robert Wilson and general Stewart it appears to be), we ought to seek the amendment of our system by availing ourselves of the example of our enemies: but he says, "Do not believe I am against punishing the soldier because I am averse to flogging him—or that I belong to the description of persons who can see nothing in the conduct of our enemies deserving censure;" on the contrary, he warns the soldier that rigour of discipline is his lot—and that he

must expect the severest infliction of punishment which man can endure—and he purposely, though I admit unnecessarily for his argument, inveighed against too indiscriminate an admiration of France, in words which I shall repeat, because they are important, and because my learned friend passed hastily over them:—"We despise and detest those who would tell us, that there is as much liberty now enjoyed in France as there is left in this country."

Such, gentlemen, is the publication on which you are called upon to decide: it is an argument, qualified by restrictions and limitations, upon an important branch of the military policy of this country. In pursuing this argument, it was necessary the writer should choose a topic liable to misconception—the comparison of the system of the French army with our own:—his argument could not be conducted without a reference to this point; but, to preserve it from abuse, he guards it by the passage I have read, and by others which are to be found in the body of the composition.—And he is now brought before you for a libel, on this single ground, that he has chosen such topics as the conduct of his argument obviously required; and used such language as the expression of his opinions naturally called forth.

Gentlemen, I pray you not to be led away by any appearance of warmth, or even of violence, which you may think you perceive, merely upon cursorily looking over this composition.—I pray you to consider the things I have been stating to you, when you are reflecting upon the able and eloquent remarks of the attorney-general; more especially upon the observations which he directed to the peculiarly delicate and invidious topics necessarily involved in the argument. The writer might have used these topics without the qualifications, and still I should not have been afraid for his case. But he has not so used them—he has not exceeded the bounds which any thing that deserves the name of free discussion must allow him. He has touched, and only touched, those points which it was absolutely impossible to pass over, if he wished to trace the scope of his opinions—and those points he had a right to touch—nay to dwell upon (which he has not done) unless you are prepared to say that free discussion means this—that I shall have the choice of my opinion, but not of the arguments whereby I may support and enforce it—or that I shall have the choice of my topics, but must only choose such as my adversary pleases to select for me—unless you are prepared to say that that is a free permission freely to discuss public measures, which prescribes not merely the topics by which my sentiments are to be maintained, but also the language in which my feelings are to be conveyed. If there is a difference in the importance of different subjects—if one person naturally feels more strongly than another upon the same matter, if there are some subjects

on which all men, who in point of animation, are above the level of a stock or a stone, do feel warmly; have they not a right to express themselves in proportion to the interest which the question naturally possesses, and to the strength of the feelings it excites in them? If they have no such power as this, to what, I demand, amounts the boasted privilege? It is the free privilege of a fettered discussion; it is the unrestrained choice of topics which another selects; it is the liberty of an enslaved press; it is the native vigour of impotent argument. The grant is not qualified, but resumed by the conditions. The rule is eaten up with exceptions; and he who gives you such a boon, and calls it a privilege or a franchise either has very little knowledge of the language he uses, or but a slight regard for the understandings of those whom he addresses.—I say, that in the work before you, no individual instance of cruelty has been selected for exaggerated description, or even for remark; no specific facts are commented on, no statements alluded to in detail; scarcely are the abuses of the system pointed out; though the eloquent author might well have urged them as arguments against a system thus open to abuse. It is the system itself which is impeached in the mass; it is the general policy of that system which is called in question; and it is an essential part of the argument, a part necessary to the prosecution of the inquiry, to state that the system itself leads to cruelty, and that cruelty cannot fail to be exercised under it. This is among the most important of the arguments by which the subject must needs be discussed: and if he has a right to hold, and publicly to state an opinion on this subject at all, he has not only a right but it is his duty to enter into this argument.

But then the attorney-general maintains, that it tends to excite mutiny, and to deter persons from enlisting in the army:—Now, gentlemen, I say that this fear is chimerical; and I desire you to lay out of your view every thing I have stated from the high authorities whose sentiments you have heard: I request you to leave out of your sight the former arguments urged by me, that you cannot impute any evil intention to their books, because you cannot to their authors. I ask you to consider, whether there is any visible limit to the argument which the attorney-general has pressed on you, when he asserts that the tendency of this publication is, to excite disaffection among the soldiers, and to prevent the recruiting of the army? I ask you whether any one of those points which are the most frequently discussed, at all times, and by persons of every rank, can in any conceivable way be discussed, if we are liable to be told, that in arguing, or in remarking upon them, our arguments have a tendency to excite sedition and revolt? What are the most ordinary of all political topics. Taxes, wars, expeditions. If a tax is imposed, which in my conscience I believe to be fraught with injustice in its principle, or to originate in the most perverse impolicy; to produce the most



galling oppression in the manner of its collection; can I speak otherwise than severely? or, however, moderately I may express myself, can I speak otherwise than most unfavourably of it, even after the legislature has sanctioned it, and laid it on the country? And yet the attorney-general may say, "What are you about? you are exciting the people to resistance; you are touching the multitude in the tenderest point; and stirring them up to revolt against the tax-gatherers, by persuading them that the collection of the imposts is cruel and oppressive, and that the government has acted unwisely or unjustly, in laying such burthens on the people." Is it rebellious to speak one's sentiments of the expeditions sent from this country? If a man should say, "You are dispatching your gallant troops to leave their bones in those charnel-houses, as sir Robert Wilson calls them, which you are constantly purchasing in the West Indies with the best blood of England; you are sending forth your armies to meet, not the armies of the enemy, but the yellow fever; you are pouring your whole forces into Walcheren, to assail, not the armies of France, not the iron walls of Flanders, but the pestilential vapours of her marshes"—such things have been uttered again and again, from one end of the empire to the other, not merely in the hearing of the country, but in the hearing of the troops themselves: but did any man ever dream of sedition, or a wish to excite mutiny being imputable to those millions by whom such remarks have been urged? Do those persons of exalted rank, and of all ranks, (for we all have a right to discuss such measures, as well as the statesmen who rule us) do those men within the walls of parliament, and without its walls (for surely all have equally the right of political discussion, whether they have privilege of parliament or no), do all who thus treat these subjects purposely mean to excite sedition? Did any one ever think of imputing to the arguments of persons discussing in this way those matters of first-rate national importance, that they had a tendency to produce revolt, and excite the soldiers to mutiny?

There is another subject of discussion which immediately strikes one; it is suggested to you immediately by the passage which I formerly read from sir Robert Wilson; indeed he introduces it in lamenting the treatment of the soldiers. I am referring to those signal, and I rejoice to say, successful efforts made by our best statesmen of all parties, on behalf of the West Indian slaves. Could there be a more delicate topic than this? A more dangerous subject of eloquence or description? Can the imagination of man picture one that ought to be more cautiously—more scrupulously handled, if this doctrine is to prevail, that no person must publish what any person may suspect of having a tendency to excite discontent and rebellion? And yet were not all the speeches of Mr. Pitt (to take but one example), from beginning to end, pictures of the horrors

of West Indian slavery? And did any one in the utmost heat of the controversy, or in the other contentions of party, or personal animosity, did any one think of accusing that celebrated statesman of a design to raise discontent, or shake the tranquillity of the colonies, although he was addressing his vehement and impassioned oratory to islands where the oppressed blacks were to the tyrannizing whites, as the whole population compared with a few hundred individuals scattered over the West Indian seas? I say, if this argument is good for any thing, it is good for all; and if it proves that we have no right to discuss this subject, it proves that we have no right to discuss any other.

But I dare say, that one circumstance will have struck you, upon hearing the eloquent address of my learned friend. I think you must have been struck with something which he would have kept out of sight: he forgot to tell you that no discontent had been perceived, that no revolt had taken place, that no fears of mutiny had arisen; that, in short, no man dreamt of any sort of dangers from the infliction of the punishment itself! The men therefore are to see their comrades tied up, and to behold the flesh stripped off from their bodies, aye, bared to the bone! they are to see the very ribs and bones from which the mangled flesh has been scourged away—without a sentiment of discontent, without one feeling of horror, without any emotion but that of tranquil satisfaction? And all this the by-standers are also to witness, without the smallest risk of thinking twice, after such a scene, whether they shall enter into such a service! There are no fears entertained of exciting disaffection among the soldiers themselves by the sight of their comrade thus treated: there is, it seems, no danger of begetting a disinclination to enlist, among the surrounding peasantry, the whole fund from which the resources for recruiting your army are derived! All this, you say, is a chimerical fear; perhaps it is: I think quite otherwise; but be it even so: let their eyes devour such sights—let their ears be filled with the cries of their suffering comrades; all is safe, there is no chance of their being moved; no complaint, no indignation, not the slightest emotion of pity or blame, or disgust, or indignation can reach their hearts from the spectacle before them.—But have a care how, at a distance from the scene, and long after its horrors have closed, you say one word upon the subject; see that you do not describe these things (we have not described them); take care how you comment upon them (we have not commented upon them); beware of alluding to what has been enacting (we have scarcely touched any one individual scene); but above all, take care how you say a word on the general question of the policy of the system; because, if you should attempt to express your opinions upon that subject, a single word of argument, one accidental remark will rouse the whole army into open revolt! The very persons

upon whom the flogging was inflicted, who were not to be excited to discontent at the torture and disgrace of their sufferings;—they will rebel at once, if you say a word upon the policy of such punishments. Take no precautions for concealing such sights from those whom you would entice into the service; do not stop up their ears while the air rings with the lash; let them read the horrors of the spectacle in the faces of those who have endured it. Such things cannot move a man: but description, remark, commentary, argument, who can hear without instantaneous rebellion?—

Gentlemen, I think I have answered the argument of the attorney-general upon the dangers of such discussions; and in answering it, I have removed the essential part of the information, without which this prosecution cannot be sustained; I mean the allegation of evil, malicious, and seditious intention, on the part of the author and publisher of the work.—I have done—I will detain you no longer—even if I could, I would not go further into the case. The whole composition is before you. The question which you are to try, as far as I am able to bring it before you, is also submitted to you.—And that question is—whether, on the most important and most interesting subjects, an Englishman still has the privilege of expressing himself as his feelings and his opinions dictate?

Gentlemen, I shall not trouble his lordship or you by calling any witnesses.

Mr. Attorney General.—Gentlemen of the Jury;—I doubt not but you have gone along with me in admiring the very eloquent address you have received from my learned friend. There is nothing in which I more disagree with him, than in the lamentation which he made for the fate of his clients, as persons having for their counsel one who was opposed to unequal force in their cause, and not competent to meet the attack by any abilities of which he was possessed, compared with those of the person who had to direct the attack. My learned friend, by the display of his abilities, has answered that part of his own argument. There is another observation of my learned friend's, which I can as little agree in—he states that his clients have to contend with the influence of the attorney-general. There exists no such influence—my learned friend knows there exists no such influence. While there are at the bar men of his talents and eloquence, it is impossible it should exist, even if persons in the situation in which I am placed had the power, and were wicked enough to exert it. I agree with my learned friend in all the general observations he has made, as to the licentiousness of the press, and the grounds we have to deplore those practices which are so hostile to the liberty of the press. I agree with him in deploring their effects on private character. I do not, however, attribute the whole of the evils which he laments, to the causes to

which he ascribes them. I go further than he does in lamenting their effects; and I believe I see those effects carried to a greater extent than he does. It is not only those who are libelled, but ten thousand who are not libelled, who feel the scourge of the libeller. You know not how many persons of weak nerves there are, who are held in contribution by this trade of libelling; we know it from the records of this court—that the question is, not whether what they publish is true, not whether it will benefit or injure the party—but whether it is likely to sell their paper. We have it on the affidavit of a proprietor of a paper, that they consider alone, either on politics or any other subject, what will best promote the sale of their paper; and that they adopt what they call the popular line, because they derive among the three hundred proprietors of a paper, a greater degree of profit. On this account and others, I join with him in those lamentations he has addressed to you on the state of the press, and in none more warmly than on the ground I recently stated, of the number of persons who are not libelled, but kept under daily contribution to avoid it.

I agree with my learned friend, that the conduct of public men must be left open to fair discussion: but if he meant to include in that proposition, that public men, because they are public men, may be libelled in newspapers, there I disagree with him. I do not say that the situation of a public man, or any other character, prevents him from having his public conduct fairly and freely discussed; but if malignity or revenge appear to actuate those who publish their observations, no pretence of discussing public measures renders such a publication innocent. When my learned friend stated to you what might, and what might not be published with impunity, I observed that he did not enter into the consideration of those repeated attacks which are made on the public peace by such publications as I have insisted before you, and shall further insist, and shall prove to your satisfaction, this publication is. To talk of this publication as a discussion—a free and liberal discussion of a public measure—to talk of this as supported and justified by the example of the gallant officer who sits by his lordship, sir Robert Wilson, or of the late brigadier-general Stewart—to draw up a rank of men, placing the publisher and printer of the “Examiner” by the side of general Stewart, and sir Robert Wilson—why it is laughable! Who are those officers to whom he refers? Men of the highest character and rank, in a profession which they adorn—men entitled to attention from the public. Whether upon such a subject it was well advised in them to give their thoughts to the public, particularly as they might have rendered them more effectual by other communications which their situations enabled them to make to men in power—whether it was prudent for them to indulge themselves in such ardent and glowing language as my learned friend has read from one of the

publications—is not for me to discuss: but this I know, that it is in human nature, especially in men of strong and firm, and perhaps of abstinent mind, when they have taken up an opinion, and are desirous of urging that opinion, and of recommending its adoption by others, not always to look to the collateral effects of the means they employ.

Whether that may have been the case with respect to the publications alluded to, is a subject upon which I am ignorant, for I own I never heard of them till to-day. It is unnecessary to discuss the point: but that those publications were fair and liberal discussions of the questions upon which they profess to treat, I have not the least doubt; and that those honourable gentlemen, when they committed their thoughts to the press, and gave them to the public, had no other object than that of submitting their opinions to the fair consideration of those to whom they were addressed. And the question for you to-day, is, whether that was the object of the defendants.

My learned friend has stated the question for your consideration in a very different manner in different parts of his address. At one time he stated correctly. He said that the question was, what was the intention of the persons who published this paper? I agree with him: but then we are to consider from what source we are to collect that intention. It is only from the language used in the text, that we are able to collect the intention; and, therefore, his lordship will tell you, that the publication which has a tendency to produce a mischievous object, must be considered as having been published with a mischievous design. I cannot dive into a man's thoughts: but I say he is answerable for all the mischiefs which the doctrines published by him have a natural tendency to produce; and the language in which he expresses himself, and the manner in which he weaves together the different articles of his composition, furnish the only clue by which you can unravel what his intention is. In that view of the proposition, I agree that the question for your consideration is, what was the intention of those publishers: that intention is to be collected from the work itself. But my learned friend, having heated himself in the course of his argument, said, that the question was, whether Englishmen should discuss a public subject in such language as was fittest to convey their own sentiments? God forbid I should dispute the truth of the proposition, that every Englishman has that right. I would be the first to stand forward and support the liberty of the press, if any man was bold or wicked enough to attempt to restrain it. Do I to-day make it a question whether a man shall be permitted, in the free discussion of a public measure, to express himself, while he confines himself within the bounds of decency and propriety, in such words as occur to him to be the fittest?—No such thing; what I impute to the author of this publication is, that he has not for his

real object the free candid discussion of a great political question; but that his object is, to render the soldiers of our army discontented with their situation; and that the publication has for its end and object, and is likely to produce as its effect, the preventing others from entering into the service. I know very well that, looking through this paper, you will find many qualifying terms by which the publisher thought to escape punishment; by which he meant to impose on those who might say he was favouring the French. To avoid this, he says; "You will find paragraphs in which I speak against the French; you say I am an enemy to military discipline; you will find passages in which I say it must be kept up." True; but when he strikes the balance between this country and France, does he draw the comparison fairly, and does he state the account justly before he strikes the balance?—for you will recollect, the balance is struck directly in favour of the French. In one passage of this paper he states, that on comparing the French with the British military service, he has no doubt as to giving the preference to the former. Now, my learned friend would defend his clients to-day, on the example of sir Robert Wilson:—I am sorry that gallant officer should be present, while he hears himself placed by the side of such companions. Does my learned friend mean to say, that sir Robert Wilson has treated this subject, and given his thoughts to the public, as the defendants have done? Does he recollect, that if he is to bring them together, he must raise the defendants to the height of sir Robert Wilson, or he must reduce sir Robert Wilson to the situation of the defendants? and are these two publications to be brought in comparison with each other? Had sir Robert Wilson the same views by his publication which on looking to this, it is obvious the defendants had? It is a fair question—and the defendants the same object and views as sir Robert Wilson? Now I will try that question: and I am glad to try it in the presence of sir Robert Wilson. I say, that the author of this work has diligently, industriously, and wilfully, presented to the public, a debased picture of the state of the British army; setting up against it the practice of Buonaparte and giving the decisive preference to Buonaparte.

The example of sir Robert Wilson is brought forward as justifying this, and I am asked, how can you prosecute the publisher of this paper, when you did not prosecute sir Robert Wilson? I take it for granted that every part of sir Robert Wilson's book, which bears favourably for the defendants, has been produced, and the only passage in which he makes mention of the French, is this:—he says, "France allows of flogging only in her armies;" that is the only instance in which it occurs. It was natural it should be introduced—and how is it introduced? Is it made the burthen of his publication? Is it that which from the beginning to the end he is constantly alluding to

as the topic he wished to press? Does he enter into the consideration of military punishments apparently only to give the preference to the French? No, he introduces mention of the French but once; and that, too, incidentally, not as forming any part of the large discussion in which he is concerned. That is the only occasion on which he makes any mention of the French. Does he introduce his application with reference to any former prosecution of a libeller? If he had, I should have no scruple in saying, that, however he had endeavoured to cover and conceal it, he must have had some object beyond the free and liberal discussion which my learned friend says ought to be allowed to every man on every subject. If I had found that sir Robert Wilson had introduced his publication with a motto which had a reference to the publication of another libel, that gallant officer would not have complained of my supposing that he must have had some other object in view.

Now, having stated that, I have nothing to do but to call you back to the libel itself.—It begins: "One thousand lashes! (from the *Stamford News*;)—collecting his authorities from all the cases he can find—How does he introduce them? "The aggressors were not dealt with as Buonaparte would have treated them." This is the first, last, and middle burthen of his publication; this is every thing to him: he never can quit the subject of raising Buonaparte, and lowering the state of our military discipline. He begins with tauntingly introducing the observation I had made on a former prosecution:—"The aggressors were not dealt with as Buonaparte would have treated his refractory troops.—Speech of the Attorney General." Then he enumerates several instances in which military punishment had been inflicted. He proceeds: "The attorney-general said what was very true—these aggressors have certainly not been dealt with as Buonaparte would have treated his refractory troops;" thus pressing out of his course to introduce what the attorney-general is supposed to have said, for he could not have said it with reference to these cases. He goes on:—"nor indeed as refractory troops would be treated in any civilized country whatever, save and except this country.—Here alone, in this land of liberty; in this age of refinement; by a people: who, with their usual consistency, have been in the habit of reproaching their neighbours with the cruelty of their punishments, is still inflicted a species of torture at least as exquisite as any that was ever devised by the infernal ingenuity of the Inquisition." Now, what does he return to? "No, as the attorney-general says, Buonaparte does not treat his refractory troops in this manner." Then, when he comes to describe, in his glowing and ardent manner, the mode of punishment inflicted on our troops, does he confine himself to merely stating that it is inflicted on British subjects? No, his delight, is to state that Buonaparte has the advantage over us. He

exalts Buonaparte, on the ground that our system is not the system in France. He says: "There is not a man in his ranks whose back is seamed with the lacerating cat-o-nine-tails. His soldiers have never yet been brought up to view one of their comrades stripped naked, his limbs tied with ropes," and so on—not stating this as the punishment inflicted on British soldiers, but exulting that Buonaparte's soldiers are not subject to it.

My learned friend says, the writer was aware of this, and, therefore, that this interpretation must be put upon it—that he has guarded his statement by observations of an opposite tendency. I do really believe my learned friend speaks from the first authority on that subject; I do believe that he knew what the intention of the writer was, and that he had attempted to guard against the obvious impression of his writings. It is only in that way I can account for what he relies on, by showing, that the author is not an unqualified admirer of Buonaparte. What does he say? "Buonaparte is no favorite of ours, God wot! but if we come to balance accounts with him on this particular head, let us see how matters will stand—he recruits his ranks by force—so do we—We flog those we have forced—he does not. It may be said, he punishes them in some manner—that is very true. He imprisons his refractory troops—occasionally in chains, and in aggravated cases he puts them to death:—but any of these severities is preferable to tying a human creature up like a dog, and cutting his flesh to pieces with whiplcord."—Now, if we come fairly to consider this, the advice that this libeller gives to us is, to adopt the system of Buonaparte in preference to our own, because he tells you that, on the balance of the account, Buonaparte's system is the best—not that he would not have us improve even on Buonaparte's system. Has he stated the account justly, allowing that he has taken into the account the imprisonment in chains and sometimes death?—Has he taken into account the manner in which Buonaparte's troops are driven, or rather dragged to the ranks—has he stated the manner in which the French conscriptions are carried into effect? When he is stating the account, and drawing a balance, could he; could any man, who meant to have dealt fairly, have been totally silent on that most material part of the subject? It is not possible, if his intent had been to have discussed the question fairly and with candour.

I stated this in my first address to you, expecting it would have received some answer. I pointed out that there was that omission in the statement of the account, and I argued it as a proof that the author was writing against his better judgment. But no answer has been given, because none could be given.

On proceeding, it is said, that there is a further qualification. He says he is not an admirer of the present state of the French government; nor does he think that the French enjoy as much liberty as the people of

this country. Upon my word, a very ample allowance!—a very ample admission!—that the people of France, whose sufferings we read of in every paper that comes to our hands, are not in the enjoyment of an equal degree of liberty with ourselves!—He admits that the French are not in the enjoyment of so much public liberty as are the British; and by making that allowance, he hopes he shall induce you to think that he has drawn his picture without partiality. It confirms what my learned friend states, that he was aware of the interpretation which might be put upon his publication, and therefore he has wrongly and insufficiently thrust in that which he hopes will induce you to think he had no bad intention. If any thing was wanting to make up the account, let us see what he further states. He introduces it by this comparison. He says, “he sees nothing peculiarly pitiable in the lot of Buonaparte’s soldiers when compared with that of our own: were we called upon to make our election between the services, the whipcord would at once decide us. No advantage whatever can compensate for, or render tolerable to a mind but one degree removed from brutality, a liability to be lashed like a beast!”

When I stated the libel before, I did not trouble you with the whole of it. Look at the insulting manner in which the author concludes it: “We have heard of an army of slaves which had bravely withstood the swords of their masters, being defeated and dispersed by the bare shaking of the instrument of flagellation in their faces. This brought so forcibly to their minds their former state of servitude and disgrace, that every honourable impulse at once forsook their bosoms, and they betook themselves to flight and to howling. We entertain no anxiety about the character of our countrymen in Portugal, when we contemplate their meeting the bayonets of Massena’s troops—but we must own that we should tremble for the result, were the French general to dispatch against them a few hundred drummers, each brandishing a cat-o’-nine-tails.”

Gentlemen, can you attribute that insulting, that infamous paragraph—can you attribute it to any thing but a desire to degrade the British soldiery in the opinion of those under whose eye it might fall? It has been said, that the infliction of this punishment lowers the spirit of the soldier. I am a plain man, and I can look only to effects in order to judge of causes; and I beg to bring to your recollection the battles of Alexandria, Maida, Corunna, Talavera, Buzaco, and the other achievements by which our armies have been distinguished—and then I will ask you, whether these troops, so distinguished by valour and discipline, can be considered as subject to a military code of laws which lowers the spirit, and degrades them in their own estimation. Men degraded and lowered in their own estimation will never stand as our brave

troops have successfully done in the front of the enemy.

Gentlemen, with these observations, I shall leave this case to your decision, fully persuaded, that although my learned friend may have placed his clients by the side of sir Robert Wilson and general Stewart, you will, by your verdict, place them with the other libellers of the day.

#### SUMMING-UP.

*Lord Ellenborough.*—Gentlemen of the jury: This is an information for a libel, filed against John Hunt and Leigh Hunt, the publisher and printer of a paper, in which they have a joint property, called “*The Examiner*.” And the information states, that the defendants, being malicious, seditious, and ill-disposed persons; and unlawfully, and maliciously devising, and intending to injure the military service of our lord the king—and to insinuate, and cause it to be believed, that an improper and cruel method of punishment was practised in the army of our said lord the king; and that persons belonging to the said army were punished, according to such method, with great and excessive severity; and thereby to raise and excite discontent and disaffection in the minds of the persons belonging to the said army; and to deter the liege subjects of our said lord the king from entering into the same;—on the 3rd day of September, in the fiftieth year of the reign of the king, published the paper in question:—And the question for you to try is, whether the publication has fairly the tendency imputed to it? If it has that tendency, the persons must be punished who have published it, intending to produce that effect. If it shall appear to you that such is the obvious tendency of the paper which is in evidence, then what it is incumbent on the prosecutor to prove, will have been made out. It is only by comparing the different parts of the libel, that you can come to a just conclusion. When I say libel, I call it that which it is stated to be in the information—it will be for you to say whether it is justly so denominated.

It has been stated by the learned gentleman, who is counsel for the defendants, in a speech of great ability, eloquence, and manliness, that the question is, whether Englishmen have a right to discuss public measures, and may give their opinions on a particular line of policy? That is a question upon which there can be but one opinion. It is competent for all the subjects of his majesty, freely, but temperately to discuss, not only in conversation, between friend and friend, but through the medium of the press, every question connected with public policy: but, in proportion to the importance and delicacy of the subject, in proportion to the peril which may attend an inflamed discussion of a subject, a guard is to be imposed upon the person at the time he is indulging in the freedom of discussion: in order that he may take care he does no material

injury to private feeling, or the public peace and happiness. Subject to this restriction, the law of England allows every man to publish what he pleases. He must, however, be cautious, that he does not make this privilege a cloak to cover a malicious intention.

Gentlemen, we are placed in a most anxious and awful situation. The liberty of the country—every thing we enjoy—not only our freedom as a nation, but the freedom of every man, depends upon our fortunate resistance to the arms of Buonaparté, and the force of France—which I may say is the force of all Europe, combined under that formidable foe. It becomes us, therefore, to see that there is not, in addition to the prostrate thrones of Europe, an auxiliary within this country, and that he has not the aid, for the furtherance of his object, of a British press. It is for you, between the public on the one hand, and the subject on the other, to see that such a calamity does not take place.

It is competent for the defendants to discuss every subject of public policy; but in proportion to its importance, every man must take care that no collateral mischief arises out of what he publishes.—We have had stated to us the publication of an excellent officer near me, and brigadier-general Stewart, who is yet living (for the attorney-general was mistaken when he supposed him dead.) Both those officers, in their publications, have commented on the subject of military punishments. In the presence of one of them, I have no difficulty in saying, that he would have done better if he had imposed more of a guard upon his observations. The purity of his purpose no one can doubt. He addresses his observations to the minister of the country: but I think he would have done better, if, on a subject of such extreme delicacy, he had made his communication in a more private manner. For, consider the inflammation—the irritation that may be excited by such observations in the minds of soldiers, on whose fidelity to the customs of the country every thing depends. It would have been more cautious in both those honourable officers, and would have been attended with less irritation, if they had discussed the subject with Mr. Pitt, in a more private form. The subject of military punishment is one which we cannot but suppose to have undergone the full consideration of the excellent persons, who, at different times, have had the command of the British armies. It is a subject which comes home to the bosom of every body—and we must suppose that those who are full of honour and feeling, have not neglected to take such a subject into their consideration. The question of enlisting for life has undergone the anxious consideration of different governments; and I know that the opinions of all the general officers have been collected individually, respecting the policy and expediency of enlisting for life. I cannot say whether any questions have been put to them on the subject of military punish-

ments. There are punishments, the nature of which cannot properly be discussed. Supposing a punishment to be a capital punishment, it is a grievous thing to consider—it is most mischievous and painful to the feelings of the relatives and family of the individual. If such a topic was to be discussed in an inflammatory way, you might be electrified—no man can say to what extent he might be disabled from discharging his duty, where the question was life or death, if his feelings and sensibility were to be so strongly worked upon. It would disable those even whose duty it is to pronounce the law, and to draw the attention of juries to issues of that description. Therefore, it is not cutting down the liberty of discussion, to require that such subjects should be discussed moderately, and that a person, in the exercise of an allowed right, should not create more mischief than he attempts to remedy.

Upon the subject of the present libel, I will advert to the terms of it, and put it to you, whether it is a fair discussion of the subject, or whether it is calculated to inflame the passions—to induce the soldiers to believe they are worse dealt with than the soldiers of France—to blunt their resistance to the forces of Buonaparté, and to place us on one side in unjust contrast with the military of France, and other countries. Now, first, as to whether this is temperate discussion—reasoning in the temper of sir Robert Wilson? Why! is this the way of temperate discussion? The first thing that strikes one is this—"One Thousand Lashes!" in large letters. What is that but to attract the mind to such a punishment as one thousand lashes—to portray it as a circumstance of horror, and excite feelings of detestation against those who had inflicted, and compassion for those who had suffered (apparently suffered) such a punishment!—for it appears to have been executed only in part. Then, as a text to comment on, the defendants say, "The aggressors were not dealt with as Buonaparté would have treated his refractory troops." Now, they begin, you observe, not by discussing the subject in general—not by saying that it would be better, with a view to the moral feelings of the army, if ignominious punishments were done away; they begin as if there had been some excesses which ought to attract attention to the punishment. "Corporal Curtis was sentenced to receive one thousand lashes; but, after receiving two hundred, was permitted to volunteer into a regiment on foreign service." It does not say what he was punished for—it does say what the other was punished for—"William Clifford, a private in the 7th royal veteran battalion, was lately sentenced to receive one thousand lashes, for repeatedly striking and kicking his superior officer."—I should have thought that would have been mutiny punishable with death; and whether the punishment was a commutation for death, I do not know. If there is any crime that shakes the foundation of military

subordination, it is that of striking a superior officer." Then they say, "A garrison court-martial has been held on board the *Metcalf* transport, at Spithead, on some men of the 4th regiment of foot, for disrespectful behaviour to their officers."—And, without saying how much punishment was inflicted on one or the other, he accumulates them; he says, "Two thousand six hundred lashes were to be inflicted among them." Then they take another—"Robert Chalkman, a private in the Bearstead and Malling regiment of local militia, who was lately tried by a court-martial for disobedience of orders, and mutinous and improper behaviour while the regiment was embodied, has been found guilty of all the charges, and sentenced to receive eight hundred lashes, which are to be inflicted on him at Chatham, to which garrison he is to be marched for that purpose." These they profess to be extracts from the London newspapers. They have taken from all the London papers those sentences to which they wished to attract notice, as being excessive and severe: then they begin—they say, "The attorney-general said very true; these aggressors have certainly not been dealt with as Buonaparté would have treated his refractory troops."—And in fact, all that follows is a contrast in favour of Buonaparté, and the mercy exhibited by him to his troops, and the tyranny exercised towards the soldiers of this country. They say, "Here alone, in this land of liberty, in this age of refinement, by a people who, with their usual consistency—" that seems to be a sting at the consistency of the country at large—"have been in the habit of reproaching their neighbours with the cruelty of their punishments, is still inflicted a species of torture at least as exquisite as any that was ever devised by the infernal ingenuity of the inquisition."—Is this temperate discussion? Is this a way in which the reason can act for itself? Is it not inflammatory discussion which overpowers the reason? They go on—"No, as the attorney-general justly says, Buonaparté does not treat his refractory troops in this manner. There is not a man in his ranks whose back is seamed with the lacerating cat-o'-nine-tails. His soldiers have never yet been brought up to view one of their comrades stripped naked, his limbs tied with ropes to a triangular machine, his back torn to the bone by the merciless cutting whipcord."—And so it goes on, portraying the circumstances that belong to military punishment. Then they say—"Let it not be supposed that we intend these remarks to excite a vague and indiscriminating sentiment against punishment by military law:—no; when it is considered that discipline forms the soul of an army, without which it would at once degenerate into a mob; when the description of persons who compose the body of what is called an army, and the situation in which it is frequently placed, are also taken into account, it will, we are afraid, appear but too evident, that the military code must still be kept distinct from the civil, and distinguished by greater promptitude

and severity." Then it is admitted that there must be a greater degree of severity; and the question is only, whether it should be of this description, or death; and if it be a temperate discussion, there could be no question more proper for consideration. But you will collect the motive from the fairness of the statement. If it is a fair balance of the account between Buonaparté and us, you may be inclined to think it was not written with a bad motive. "Buonaparté is no favourite of ours, God wot!" I do not know what that means—"But if we come to balance accounts with him on this particular head, let us see how matters will stand. He recruits his ranks by force—so do we." Is that fair? What is the mode by which the army is recruited in this country? The regular army is not recruited by force. The militia is only that service which every man is liable to by the common law of the land. Antecedently to the formation of a regular army, every man was obliged to stand forth for the defence of the country. The duty which was performed formerly under a commission of array, has since, by the establishment of the militia laws, been thrown on the more capable; and persons, with certain exceptions, are ballotted for. They learn for a limited time the military exercise; and are subject, during that period, to the provisions which are familiar to you. The local militia is a service of the same nature, but for a shorter time. This is the sort of force we resort to—a general ballot.

Every man who is at all acquainted with the history of the two countries, knows that nothing can equal the rigour with which men of every rank and station are treated in France. There they are all drawn out, and forced to serve—how? in defence of their own land? no; they may be carried to Spain, to be opposed to the British troops, and be made the instruments of the most ambitious man that in these times has been created. But it does not end there; it is not the mere individual—any relative, who endeavours to withdraw him, is liable to punishments of such horror, that any one who reads the code of conscription, will say it exceeds every thing in the shape of a rule of law. The parents are doomed to linger out their lives in the galleys, or imprisonment. It is a matter of general history that the military system in France is of the most cruel and malignant inflection—Is the balance of the account then stated fairly? "He recruits his ranks by force—so do we." Is there any parallel between his force, and the mere balloting for the militia?—for that is the only instance of force which applies to the defence of our land. Then the writer says, "We flog those whom we have forced—he does not. It may be said, he punishes them in some manner—that is very true. He imprisons his refractory troops, occasionally in chains, and in aggravated cases he puts them to death: but any of these severities is preferable to tying a human creature up and cutting his flesh to pieces with whipcord."

Then he goes into an irritating detail of the miseries which do arise from this punishment, and which do harrow up the feelings of men who consider them in detail. It is an evil that has subsisted in the eyes of the legislature, and of that honourable body who constitute the officers of the army, and it has not been remedied. If there are persons who really feel for the private soldier, why not endeavour to remedy the evil by private representation? But when, as at this moment, every thing depends on the zeal and fidelity of the soldier, can you conceive that the exhibition of the words "One Thousand Lashes," with strokes underneath to attract attention, could be for any other purpose than to excite disaffection? Could it have any other tendency than that of preventing men from entering into the army? If you feel it is of that inflammatory nature, it is for you to say, whether you can do otherwise than consider it as a means to promote the end it is calculated to produce? I hope, if it is an effort of this sort, and that its object is to discourage the soldiery, it will be unavailing. These men, who are represented as being treated ignominiously, have presented a front, and successfully, to every enemy against which they have been opposed.

I do not carry your minds to any particular army; but on what occasion do you find the soldiery of Great Britain unmanned by the

effect of our military code? If it be expedient to change it, we hope and trust that those who occupy places in the legislature, or places of trust, will pay attention to the subject. This publication is not to draw their attention to it, if the evil be remediable; but seems intended to attract the attention of the military, and to induce them to consider themselves as more degraded than any other soldiers in the world—to make them more reluctant soldiers, and less ready to serve us at this awful crisis, and render the country that assistance without which we are collectively and individually undone. I leave you to say, coupling the context with this balance of account between Buonaparté and us, whether this publication has not a tendency to produce the mischief ascribed to it.

Gentlemen, it is generally expected that, under the suggestion of the act of parliament—it is not peremptory on me—but it is generally expected—that I should state my opinion:—I have no doubt that this libel has been published with the intention imputed to it; and that it is entitled to the character which is given to it in the Information.

The Jury withdrew, and after remaining in consultation two hours, returned a verdict by which they found both the Defendants Not Guilty.

686. Proceedings at the Trials of the CARAVATS and SHANAVESTS, under a Special Commission for the Counties of Tipperary, Waterford, and Kilkenny, in Ireland, before the Right Hon. John Lord Norbury, Lord Chief Justice of the Common Pleas; and the Right Hon. Standish O'Grady, Lord Chief Baron of the Exchequer of Ireland, in the Month of February: 51 GEO. III. A. D. 1811.\*

CLONMELL, Monday, February 4th, 1811.

GRAND JURY.

John Bagwell, Esq. Foreman.

Sir J. C. Carden, bart.	Nath. Taylor,
Stephen Moore,	Denis O'Mahor,
John Palliser,	John Roe,
Samuel Perry,	John Lawlor,
Samuel Jacob,	Andrew Ryan,
William Baker,	Oliver Leatham,
Henry Langley,	Henry White,
Thomas Going,	P. A. Butler,
Richard Creagh,	J. P. Roe,
Robert Cooke,	William Despard and
Thomas Prendergast,	B. B. Bradshaw, Esq.

\* From the short hand Report of Randall Kernan, Esq. barrister at law.

THE Grand Jury having been sworn, Lord Norbury addressed them, as follows:

Gentlemen; You are not surprised that the principal gentry and inhabitants of this great county are thus assembled at an unusual period.—After the many atrocities that have disgraced and disturbed it of late, you would have been justly discontented, if the government had been remiss or reluctant in giving immediate and active operation to the law, and an opportunity of appealing to the authoritative and protecting administration of justice against reiterated and continuing outrage. Notwithstanding that you have been heretofore visited at the regular periods of assizes, by the able judges whose wholesome admonitions have been given from this bench, with a view of reclaiming the licentious spirit of the tumult-



tuous—notwithstanding the many strong and salutary provisions of the legislature to coerce, punish, and deter public and dangerous offenders—notwithstanding the many painful examples of capital punishments inflicted on unhappy delinquents by the sentence of the law—notwithstanding the alarming burst of a late rebellious insurrection, and the multitude that fell victims to it—notwithstanding the proud and manly exertions of the loyal inhabitants, who then vanquished and will for ever subdue the destroyers of public safety and domestic comfort—notwithstanding the restoration of general tranquillity by the wisest measures of government—notwithstanding the merciful magnanimity of a gracious and good sovereign, and temperate legislature, in giving pardon and amnesty to a deluded and infatuated rabble, we still have cause to lament, that insidious and wicked men have continued to seduce the unwary, and to plunge into dangerous associations, under the blasphemous sanction of oaths, the unhappy men whose cases have caused you thus to be assembled. 'Tis wonderful how the characteristic credulity of the lower orders still continues to be duped by a few contemptible, depraved, insidious leaders, who are grown hardened, desperate, and practised in seduction—but pardon is ill bestowed upon the desperate.

It has been observed by the historian of a former period, that no grace will quiet such restless minds. Men, long inured to rapine and sedition, contract inveterate habits; no experience of miseries, which attend their crimes, and ruin which constantly follows, can deter them from attempting new mischiefs; but with your co-operation, and that of the virtuous and spirited men of this country, we shall give new and warning proofs, that this insurgent spirit shall be put down by the arduous efforts of the law, without departing from the benignity of its principles. In conversations with some of the magistrates of this county, complaint has been made, that their power has been lately curtailed by the expiration of the act, commonly called the Insurrection act. It is not becoming to impute culpable omission to the legislature; but I trust that in its wisdom, the revival of that law which was found salutary in its practice, and which I never heard of being made bad use of, may again enable (so long as insurgents exist) the magistracy and resident gentry to protect the innocent from that nocturnal outrage which has so deeply injured the character, credit, and comfort of the country. But let us not complain of the want of legislative provisions. Although I hold in my hand so alarming a calendar of men incarcerated in your gaol, under the heaviest accusation for their various imputed crimes, I have also the Statute-book before me where various laws still exist, that are sufficient to meet and to punish those crimes, which, on due investigation, may be sanctioned by the authority of your finding indictments framed upon them. Upon looking

into that copious catalogue which lies open before me, in Mr. Ball's most excellent index to our statutes, I find classed under the head of riot and assemblies, no fewer than ninety-eight distinct provisions, from Henry the seventh to this time, to control the prevalent mischiefs, as occasions arose for the necessity. For it has been well observed by the wisest men and the most humane judges, amongst whom was sir Matthew Hale, that from the vices and infirmities of men, the variety of unforeseen events, when offences grow dangerous, frequent, and enormous, so as to be dangerous to civil society, coercion, and punishment must be provided to deter the guilty, and protect the innocent; and such were the occasions that lately gave birth to the Insurrection and Convention acts. I wish that the first had not expired, and that the other was better recollected and more duly respected, when the spirit of dangerous sedition and illegal cabals and associations insult society, and openly defy the provisions of this salutary law.

In this county the parliamentary functions of Caravats and Shanaveats, have promulgated the laws, have levied contributions and forces, and as the natural produce and effect of their counsils and energies, they have excited the standard of their terror, and the plunder of arms is the audacious practice;—nocturnal and barbarous outrage has been let loose, and a paltry banditti, of the lowest description, and insignificant when openly opposed, has inflicted the cruellest torture on the peaceable and unprotected cottager—and, shameful to tell, the native chastity of the females is universally violated by licentious brutality. The cries of the distracted mother, and the tortured father, the shrieks of the violated daughter, have pierced the attentive ear of government;—that government calls for your co-operation, and I tell you that the law is strong enough to assist you.

Gentlemen the statute to which I particularly call your attention, is the 15th and 16th of the king, a law to prevent tumultuous risings, commonly called the White-boy act. Some of you are not old enough to remember its history;—I lament to tell you, that it took its rise from the repeated outrages that disgraced this county at the commencement of his majesty's reign. Foreign emissaries were sent here to seduce and distract, as a prelude to an intended invasion by France. The French fleet was vanquished and destroyed by the invincible superiority of the British navy, and the insurrection was crushed by the valour and virtue of our country, which will for ever be predominant. The peccant matter still infested our quiet, which gave occasion to the law I allude to, and which has now existed for near half a century, and gives ample power to the magistracy, and to the administration of justice. The multitude of cases that have been adjudged upon it, are familiar to your experience—the number of sentences that have been awfully pronounced from this bench, should

have been as a warning voice to the guilty.

[Here the learned judge read extracts from the preamble and provisions of the statute, and then observed:]

You see, gentlemen, how comprehensive the law, how ample the powers to the magistrate, and how great the remuneration to the injured and their families, at the grievous expense in taxes which must be levied from the offending county. I do not address you with cold formality; I speak to you with undisguised freedom. Though most of you are firm, active, and virtuous, there are some who, from supineness, mistaken lenity, or most criminal favoritism to delinquents, recommended, concealed, or partially protected, who have much to answer for, and have been actuated by the shameful and criminal seeking for popularity with a rabble, at the expense of the peace and good order of society. This will not do; let me implore you to lay aside all distinctions and divisions of party; if not, the outrageous and the tumultuous will drive you from this beautiful and delightful country. Your credit with other countries has been injured—you are placed in high and eminent situations—you can view and investigate the situation of your country—you have an arm strengthened by the law to drag the offender to justice; and with another arm you can spread a shield over the head of the innocent and unprotected. Make your best efforts with the law against this siege of trouble; if you fail, you must take up arms, and “by opposing end them.” You have the finest country, and the best constitution in the habitable world; and whilst every other part of Europe has been distracted by anarchy, and finally sacrificed and devoted to the iron tyranny of a military despot, we are come to administer justice, in the sacred temple of the law, where no hasty decision or intemperate conduct shall contaminate your proceedings or derogate from the pre-eminent virtue of the British constitution.

During his majesty's reign, this country has, for the course of more than half a century, experienced a continued series of grace and favour; all ranks and descriptions of men have been happily embraced, to have a common interest and participation in the blessings we enjoy. The country has increased in wealth and improvement, to an unexampled degree; and within my own time I have the pride to see many of my countrymen raised by their industry and honest exertions to high and honourable rank in the community, and exercising amongst those whom I address, the proudest privileges of confidential situations. We are all engaged in a common cause, to protect the civil and religious liberties of mankind in this her best asylum. The most valiant of our youth are fighting your battles. We will, with the assistance of Providence and the vigour of the law, preserve their families, to welcome them home to domestic enjoyments, on their return.

VOL. XXXI.

# PETIT JURY.

James Miller,  
John D. Kelly,  
John Revel,  
William Edmonston,  
Thomas Quinn,  
Weldon Jordan,

Robert Shaw,  
Daniel Dooley,  
Daniel M'Shane,  
Thomas Hayden,  
Jeremiah Keely,  
William Keely.

A number of prisoners were arraigned, and indicted, under lord Ellenborough's act, for an assault, by firing a loaded gun, with intent to kill, &c. They were also indicted for an unlawful assembly, and for assuming the name of Caravat.

Mr. *M'Nally*, as counsel for the prisoners, moved, that their trials should stand over till next day, on the ground, that the warrant of committal had specified felony at large, and, therefore, that the prisoners could not now be ready to take their trials, inasmuch as they did not know, till this moment, with what offences they were charged.

The Court granted the motion.

ANDREW KERWICK and LAURENCE DWYER were then given in charge to the Jury, and indicted for robbing Patrick Gibbons, one of the guards of the Cork mail-coach, of two blunderbusses and two pistols, at Grange turnpike-gate, in the county of Tipperary, on the 21st of November, 1810.

Mr. *Campbell*, counsel for the prisoners, moved to put off their trial, on the usual affidavit, which stated the absence of material witnesses, &c. &c.

The Court refused the motion, on the ground of the insufficiency of the affidavit; which should have stated, that the witnesses were served with crown summonses. Mr. *Campbell* offered to examine the bailiffs who served the summonses, *visâ voce*.

The *Solicitor General* [Mr. Bushe].—Gentlemen of the Jury; The prisoners at the bar are charged, by this indictment, with one of those crimes, the frequency of which has made it necessary to speed a special commission, at this inclement season, and inconvenient period. They are charged with having robbed, from one of his majesty's mail coaches, upon the king's highway, those arms which are entrusted to the guards for the protection of the passengers and correspondence. It will appear to you that the coach was robbed only of the arms, the seizure of which was so exclusively the object of the banditti, to which (as I am instructed) the prisoners belonged, that at the moment of the robbery, they made it a matter of boast that they had demanded no other plunder. This prosecution is therefore peculiarly called for upon the present occasion, because the offence that has been committed grows altogether out of that passion for arms, which has unfortunately possessed the lower orders of people in this country; which is the peculiar character of almost all the outrages which have taken place; which

has generated so many crimes; and which, in its result, threatens the public peace with all the formidable consequences of an armed peasantry, and a disarmed gentry. You will find by the evidence, that the commission of this crime has been distinguished by particular audacity; that the ruffians were numerous; that they conducted their enterprise with considerable skill and address, that they had interrupted the progress of the coach, by chaining the turnpike-gate, in a place where it would have been difficult, if not impossible for the coachman to turn his horses; and that they had contrived an ambush, from whence they could command the object of their attack, without being exposed to the fire of the guards in return. I do not desire farther to anticipate the facts which, I rather wish you should learn from the witnesses; and shall, therefore, proceed to make some observations upon the deplorable situation of this country, and the provisions of those laws which it is the object of this commission to enforce. Such observations I consider it my duty to offer on this occasion; they will apply, I admit, to much more than the merits of this particular trial, and are rather addressed to this respectable county, thus publicly assembled, than to you, gentlemen of the jury, in particular. Suffer me, therefore, to entreat, that if, in the course of my address, I should excite your alarms for the state of this county, nothing which falls from me may prejudice the unfortunate persons upon trial. Of them you will judge calmly and dispassionately, from the evidence alone.

We, who conduct those prosecutions, expect and hope a firm and vigorous administration of justice; we are deeply impressed with a sense of your danger, and of the necessity of salutary example; but it is also our most anxious desire, that no man may be convicted upon any trial except upon the most satisfactory and indisputable testimony; and that, in every case, where a reasonable doubt of guilt can be conscientiously entertained, the prisoners may have the benefit of it by an instantaneous acquittal. Perhaps it may be thought the less necessary to discuss the nature of those mischievous associations, which have produced, at different periods, in this country so many crimes and so many misfortunes, because his lordship, in his charge to the grand jury, has so fully and so ably traced their history and progress. I cannot, however, forget, that upon several former occasions, the county of Tipperary has been exhorted from that bench to very little purpose, and I lament that I must add, that the mischief has been suffered to proceed and to gain ground, as if the gentlemen of this county were altogether insensible of the perils which surround them. Upon former occasions, when the evil was in its infancy, I fear that many men were so infatuated, as to conceive, that by temporising with the disturbers of the public tranquillity, they might secure their individual safety in the midst of the general danger. I fear that many indulged a

sympathy with the murmurers against those alleged grievances, which the noble and learned judge has shown it has always been the pretence of such confederacies to redress. I fear that some persons have folded their arms, and looked on with patient apathy, while the plunder of the clergy, and the collection of tithes, appeared the only object of insurrection. To others the obstruction of the public taxes might appear a venial and justifiable motive for disturbance. In some parts of Ireland, where the people rose against the claims of the Roman Catholic priesthood, and affected to regulate their dues, many did not foresee that the habit of popular interference could not be confined to any particular object; and if indulged, it would grow into a claim to general superintendence over every thing established. Such, unfortunately, has been the case. Out of the apathy and indolence, or connivance of the gentry, has grown the dominion of the mob. From complaining of particular grievances they have now declared war against property in general; they have been suffered to arm themselves—and they threaten to disarm you—your rents are subjected to the same government which the White-boys, in the days alluded to by his lordship, claimed to exercise over tithes and corn, and the melancholy result necessarily must be, that if the mischief be not effectually checked, the peace, and property, and life of every gentleman in the county will be at the mercy of an armed and licentious rabble; and what an iron despotism is the dominion of the mob! The tyrannies of ancient and of modern times are comparatively blessings. In such governments, it is the intent of those in power to promote civilization, and advance the arts of society—but the effects of those ruffian legislators, who now affect to govern this country, are calculated to obliterate every trace of culture and improvement, to cut off the sources of public prosperity, and to introduce universal barbarism. What is the first avowed object of these savage associations, to enforce the commands of which you are nightly plundered of your arms? It is the regulation of landed property and its produce—it is the vain and idle attempt to fix a maximum for rent, and to prescribe the price of labour—it is the frantic project to prevent the transfer of property, and to frustrate the exertions of industry:—the nature of things, still more than the operation of positive law, has decreed, that property should find its own level; and it is the first principle in a commercial country, and the first consequence of national prosperity, that property should be in a state of perpetual transfer and circulation. Thus the industry of individuals is rewarded—enterprise and improvement encouraged, unproductive idleness is punished, and the public good is the necessary result. To check this natural progress, to avert this perpetual motion in the great machine of human society, no legislature, however enlightened or powerful, has been ever rash or strong enough to attempt; and what

the wisest men and best of governments would tremble to undertake as impracticable, and would reject as undesirable, these mob legislators and banditti reformers have announced as the law of their association, and enforce the observance of that law by torture and by murder. Land, say they, shall never rise, and property shall never change its possessor. To all ranks are their mandates equally directed, to the rich and to the poor. To the gentleman of landed property they proclaim that the land, which his ancestor had demised 30 or 60 years before, must not rise, upon the expiration of his lease, or must only rise according to their arbitrary standard. Though the price of every article around him has increased fourfold, by a fluctuation in value, which he cannot control, yet the value of his land must remain stationary; and this is not all—if the former tenant were a beggar or a knave, he must be continued; no honest or industrious man, however willing to succeed him, and to benefit the property, by his capital or labour, is allowed, upon pain of death, to be a competitor with the old proprietor. The consequence is, that the land must remain unset, as in several instances it is, to the ruin of all individuals concerned, or the landlord must submit to the terms thus arbitrarily dictated to him.

This infliction is not confined to the estated gentlemen, but visits the laborious poor. The labourer must not take, and the master must not pay, any wages, but those which the reformers may prescribe—nay, the labourers must only belong to such districts as are specified by the insurgents, who, in this part of the system, foment national and provincial, and almost parochial antipathies amongst the poor. It is not long since unfortunate labourers from Kerry, or some other distant counties, in which the harvest is late, have been forbidden, upon pain of the most dreadful punishment, to offer their labour here in the earlier season; and in many instances, their intrusion has been stoned for by barbarous tortures and cruel death. Another part of their system has been, to denounce, as public delinquents, all persons of the lower order, who contribute, in any degree, however humble, to the administration of justice, civil or criminal; and not only the process server and the tithe valuator is proscribed, but every witness, who comes forward in aid of the laws, is stigmatized by the odious appellation of informer, and devoted to vengeance and to slaughter. This is a very faint outline of that dreadful system, which has gradually grown almost to maturity out of that impunity which has too often encouraged the baneful confederacies, that at different periods, as the noble and learned judge has so justly observed, have infested and disgraced this country.

Such is the system which the rabble seek to establish by the plunder of arms—such are the dreadful consequences which must ensue, if such plunder be not checked—such is the

prospect which opens so formidably upon both the rich and the poor. It is no longer any thing but an idle speculation, whether these miscreants are encouraged by emissaries from the foreign enemy or domestic traitors. Probably the origin of the present disturbances cannot be traced to such high sources—it little matters how that is; it is perfectly certain, that if at a future day rebellion should again raise its head in the country, or the French should unfortunately effect an invasion, either the one or the other would find well prepared and willing auxiliaries in the armed peasantry of the county of Tipperary, habituated to crime and familiarized to blood; in the mean time it is equally certain, that they are rapidly reducing this fine district to a state not to be endured in a civilized country, a state of things too well illustrated by the frightful catalogue of crimes traced upon that calendar now before their lordships. For the purpose of checking the mischief, if it be possible, this special commission has issued, to enforce the execution of those laws, which, in other counties, upon former occasions, have been found abundantly adequate to its suppression; why, it should be the character of this incorrigible county, that those laws, elsewhere successful, should be supposed insufficient here, I cannot conjecture—sure I am that they cannot have been well understood, or if so, they have not been zealously or faithfully executed. I am drawn to this subject, by what has fallen from the noble and learned judge in his charge to the grand jury; from which it appears, that since his arrival in the county, several gentlemen of consideration have lamented to him the repeal of the Insurrection act, and attributed the disturbances of the county to the want of those domiciliary visits which that statute authorized—I do not doubt that the opinions of those respectable persons are entitled to high consideration—possibly it is mistaken.

I shall not so far forget the place in which I am, as to undertake such a topic. I feel myself bound to presume that all the acts of the legislature are founded in wisdom, and to recollect that we are assembled here, not to lament over repealed laws, or to speculate upon their revival, but to execute and enforce the laws that are in existence. This is not a house of parliament, or a place for political discussion. It is a court of justice, in which the law is to be administered; but when I hear the misfortunes of the country attributed to such a cause, I cannot avoid remarking, that they are unhappily of a much older date than the repeal of the Insurrection act—that that statute, though upon the book, has never been acted upon since the rebellion; and that the laws at this moment in force have, since that period, been found adequate to the suppression of many such commotions as now afflict this country. I can speak from much experience upon this subject; my learned friend, sergeant Moore, now at my side, whose

services to the public upon such occasions can never be overvalued, has witnessed with me memorable instances, in which a faithful and vigorous execution of those laws has been attended with the fullest success. He remembers when the entire province of Connaught, with the exception of one county, and when two counties in the north-west circuit were overrun by the insurgents, called Threshers,\* upon that occasion the disturbance was so violent and general, that the king's judges, upon a special commission, could only move through the country under the escort of a troop of dragoons; the meetings of the people had been so frequent, numerous, and audacious, even in the open day, and the outrages so many, that it was doubted, for a time, in the town of Castlebar, whether the execution of six convicts could with safety take place pending the commission; yet, in the short space of less than a month, that commission visited five counties, and by the firm administration of the laws, supported by the cordial co-operation of the magistracy and gentry, such was the triumph of justice, that the insurrection dissolved before its influence, and from that period (the year 1806) until this hour, so perfect has been the tranquillity then established, that the crown solicitors for those counties have never had one case of public disturbance to prosecute.

We remember the more recent instance of the western part of the county of Limerick, which stretches along the Shannon, and the entire of the county of Kerry, having been convulsed by similar outrages, almost to insurrection; yet those laws, supposed now to be ineffectual here, were executed there, under the auspices of one of the learned judges now presiding, and with such success, that those districts have ever since (a period of more than two years) enjoyed perfect tranquillity; and if a small portion of Limerick remains at this moment partially disturbed, I am sorry to be obliged to state, that it is that Eastern limit which owes its unwholesome state to the infectious vicinity of this unfortunate and incorrigible county. I cannot, therefore, but hope that those gentlemen who have despaired of the laws which exist, have done their best to understand them and execute them—I hope that they are not palliating their own inactivity and negligence, by criticising the acts of the legislature and the government; and I trust that every man, who finds fault with the laws of his country, is able to lay his hand on his heart, and assure himself that he has done the utmost to carry them into execution;—until then, let him not think of stronger remedies. An ancient fable tells us, that when a certain man had got his waggon wheel into a rut, he looked up at once to the higher powers, and prayed to Jupiter or Hercules for assistance; the god gave him not assistance but advice—my friend, put your own shoulders to it; he did so, and with effect. I say to you, gen-

tlemen, with great respect, put your own shoulders to this business, and you may be certain of success. Every one must admit, that as long as it is possible to do so, the public tranquillity ought to be maintained in the manner most congenial to the principles of the constitution. I can very well conceive an extreme state of things, in which, perhaps, stronger measures than the insurrection act may become necessary—we all remember such a season, and we must implicitly rely upon the wisdom of parliament for such enactments, either of old or new laws, as future circumstances may require; but I cannot believe that the code of laws principally to be acted upon, during this commission, can have been well considered by those who, in the present state of this county, despair of its efficacy.

It is not, perhaps, sufficiently recollected that the White-boy act, though so old as the year 1776, is by no means any part of the permanent law of the land; it is an occasional code; which sleeps upon the Statute book, until called into activity by the crimes of some particular district; and this is so peculiarly the case, that no one provision of it can be applied or acted upon in a court of justice, unless there be previous proof that the county in which the offence be committed, was at the time in a state of tumult, produced by unlawful associations; so that at this instant, out of the 32 counties of Ireland, there are more than 25 in which that statute is not the law. Its provisions are so severe, that the mere act of unlawful assembling, without the commission of a single act of violence, is itself a high misdemeanor, punishable at the discretion of the judge with imprisonment, pillory, whipping, or other corporal punishment; but almost every act, which is possible for men, once unlawfully assembled, to commit, even many that by law are mere trespasses, and some which are not, such as the delivery of letters or messages, in furtherance of the association, are all made capital felonies, and death is the common punishment of all—and in all such acts, not merely the principals, but all such as assist, abet, or succour them, are subject also to capital punishment, without benefit of clergy. This statute is not confined merely to the punishment of crime, when prosecuted, but is calculated to assist the magistrate in bringing criminals to justice; if he has reason to suspect that any person can give him information of an offence committed, he may summon him, to be examined, and to be bound in a recognizance to prosecute; and if he refuses to submit to examination, or to be bound in a recognizance, the magistrate may commit him to prison, until he shall submit to such examination or recognizance. The magistrate too is authorized to apprehend, disperse, resist, and oppose, all persons concerned in these unlawful acts, and to command all his majesty's subjects to assist him in so doing; and if, in apprehending, dispersing, resisting, or opposing such persons, any person be killed or maimed,

\* Vide 9 How. Mod. St. Tr. p. 1.

the magistrate, and those assisting him, stand indemnified from the consequences. Under this strong authority did the sheriff of the county of Kilkenny, in the last autumn, and the Rev. Mr. Hunt, a magistrate of the same county, in a late instance, act, and by doing so, gave a considerable check to that spirit of mischief and outrage which visited that county from this in the course of last year.

I am sure that every gentleman who hears me is anxious to discharge his duty: but you must excuse me, if I say, that on such extraordinary occasions, ordinary exertions are insufficient. Such conduct as Mr. Izod's, and Mr. Hunt's, must be adopted. I admit that it is an arduous and grievous service, and what no one can be expected to undertake, unless in the hopes of establishing permanent tranquillity. It is attended with danger, fatigue, privations, and unpopularity; but all these must be encountered at such a moment, and no magistrate must conceive that he discharges his duty, by sitting in his office, as in common times, taking informations and signing mittimus; he must do more; he must not wait for information, but seek it, and pursue it, and when found, act upon it; and if any man found himself too old, or not sufficiently robust, or too timid, or too prudent, for such an energetic discharge of duty, it is better he should resign his situation at once, than disappoint the public by retaining it, and propagate inactivity by his own example. The government of the country is, as you all well know, vigilant and active in co-operating with you. I well know that a considerable portion of the time of his majesty's government in this country has of late been devoted to the peace of this unfortunate county; every magistrate that chose to act has been in correspondence with that government; and I well know that the public purse, and the public force, have been liberally distributed to promote the peace and justice of this county. I speak in the hearing of the general officer who knows the fact, that there is at this moment a greater and more disposable force in the county of Tipperary, than was in the Rebellion of 1798. What then is necessary? You have strong laws and an active government; but these are all unavailing, without your own exertions; I mean no single, insulated, and mutually contradicting efforts, but cordial and unanimous co-operation.—If you are divided yourselves into factions and parties, you thus prepare to submit to that mob which insults the justice of your country.—If partiality and favour should obstruct justice—if one gentleman, from tenderness, will not bring forward a prosecution—if another, from partiality, will screen an insurgent—if a third, to court a filthy popularity, will compound a felony—if some men, from hostility to others, will thwart a prosecution instituted by a rival—if others conceive it an insult, that an outlaw under their protection and sanctuary, should be made amenable, and should, in emulation of

the feudal seignories, reckon the felons upon their domains as part of their possessions—if such things should be, then, indeed, would I despair of your county, and think, that neither the existing laws, nor any other that could be enacted, would be sufficient to protect you against yourselves. But confiding as I do in the high character and respectability of the gentlemen of the county, I will not suffer myself to doubt that the present commission will be productive of salutary and beneficial examples, and that it may not be necessary, at any future period, to resort to any of those strong proceedings, which, unless in cases of the strongest necessity, every one must deprecate.

*Patrick Gibbons sworn.—Examined by Mr. Sergeant Moore.*

What employment are you in?—I am one of the guards of the Cork mail coach.

Were you in that employment at any time in the month of November last?—I was.

Did you meet with any obstruction in your travelling, at that time?—I did; at Grange turn-pike gate, about 3 miles and a-half from Cashel.

Who keeps that gate?—I don't know the man's name; we were going to Dublin.

What persons had you in the inside and outside the coach?—Four inside passengers; Thomas Willet, the coachman, and my comrade guard outside.

What was the first thing that obstructed you?—The turn-pike gate was shut when we came up to it; it was tied with a hemp rope on one side, and an iron chain on the other.

Did you hear any voices?—Yes; there were nine or ten speaking at once; they demanded our arms to be delivered to them I had a blunderbuss and a case of pistols.

What answer did you give?—Dunn, said I to my comrade, we are attacked, and stand in your own defence.

Did any person speak to you?—Yes several said that they did not want to rob the mail; but the arms they must get, or they would kill the two guards.

Did any person come forward?—No; but I saw four or five muskets presented from the corner of the house.

Was there a dwelling house?—Yes the turn-pike man's house.

What did you do?—I told them to come and to give me a fair shot, and if they afterwards killed me I would forgive them; then I put the blunderbuss on my knee, and I kept my eye on the corner, and said I would not give up my arms until I was killed; there was one shot fired.

What hour was the coach stop? Did they get the arms?—Yes; after a long contest; Counsellor Townsend put his head out of the coach, and desired us to give up our arms; the party said they would only give me five minutes to live, and four of them had expired. We then gave up our arms, as we were di-

rected, to the coachman. I gave him a blunderbuss and a case of pistols.

What did the coachman do with the arms?—He left them on the wall, as he had been desired.

Did you see the arms taken away?—I did.

Did you make any delay there?—We continued as long as we might have travelled three miles.

Do you see any person in court that you can swear was among the party?—Yes; there is a man there, Dwyer, [pointing to one of the prisoners]; I swear he was among the party; I saw him three or four times; I took him to be the turn-pike-man's son; I have no doubt whatever of his being one of the party; we had the light of the moon, and the light of the coach lamps; I complained to the officer commanding that we had been robbed.

Cross-examined by Mr. Campbell.

Witness said, he had been guard of the mail-coach since March last—he had followed the trade of a weaver—knew none of the gentlemen in the mail-coach but counsellor Townsend—he was angry with himself for not having made use of his arms—heard the prisoner was servant to the turnpike-keeper—had often seen him employed at the gate, pitching dung—he heard talk of Mrs. Mills being the wife of the turnpike-keeper.

Thomas Willet sworn. Examined by Mr. Prendergast.

In what employment are you?—I have been coachman to the mail for about six months.

Were you on the Cork mail on the night it was stopped?—I was.

At what hour were you stopped?—At about half past one.

What kind of night?—It was a very fine moon-light, and we had the coach-lights.

How were you stopped?—The turn-pike-gate was fastened.

What did you do?—I called out to the guard to stand to their arms; in a minute after, we heard several voices cry out, deliver your arms.

What did you do then?—Stood there. There was one shot fired.

What happened after?—I came round to the guard, and said, what shall we do? We must fight them, or we must die. I heard a great number of voices, and saw their muskets pointed by the corner of the paling of the gate.

What happened after that?—The guard said, in the honour of God, lads, open the gate and let us quietly pass; one of them replied, in the honour of the devil you shall not go till you give us your arms—we will take you off your perch, if you don't deliver up your arms; they kept behind the gate during this conversation, which lasted about a quarter of an hour.

Were the arms given up?—Yes; two blunderbusses and a case of pistols.

Turn round, and see if you see any person of that party who was there.—[The witness identified Kerwick, by putting the crier's rod over his head, and saying that he knew the prisoner to have been one of the party that robbed the guard of their arms.]

Did you see the prisoner at any time before at the gate?—I saw him constantly there, he had nothing in his hand on the night of the robbery but a kind of a stick. I saw one of our pistols with him after we had laid them down on the wheel.

Lord Norbury.—How soon after did he take it up?—Immediately.

Did you hear Kerwick, the prisoner, say any thing?—Yes; he said that if we would say we were robbed, he would take our lives the next time we came the road. We gave information of the robbery to the sergeant of the guard at Littleton.

[Nothing in favour of the prisoners arose from the cross-examination of this witness.]

Sergeant Sherlock sworn.—Examined by Mr. Pennyfather.

At what hour in the morning did you receive the information of the robbery of the mail-coach?—A little after six. We surrounded the turnpike-house, and then went into it. When I went into the kitchen, and saw Anne Kirwan and the prisoner, I asked was there any men in the house but themselves? The girl said, there was an old man in that room, and, on going towards the room, Kerwick said, there is a little boy there; but no other man in the house.

Did you go into the room?—Yes; I found the old man and the boy, and another man lying in the bed with his clothes on; I saw him put on his shoes.

In what state were his shoes?—They were freshly wet and dirty.

Turn round, and look if you see him?—That is he, [Pointing the rod to prisoner Dwyer.]

Samuel Jacobs, Esq. a Magistrate, sworn.—Examined by the Solicitor General.

Do you recollect when the mail was robbed?—I do.

Was the country in a disturbed state at that time?—So much so, that I wrote to government to establish barracks; the peace of the country was materially injured by parties holding nightly meetings, and taking up arms.

[Here the case on the part of the Crown closed.]

#### DEFENCE.

John Mills sworn.—Examined by Mr. Campbell.

You are keeper of the turnpike gate?—I am.

Do you know the two prisoners, Kerwick and Dwyer?—Yes. Kerwick was in my employment, and Dwyer was a labouring man

whom I hired occasionally. Kerwick received the toll of the gate, and I used to pay Dwyer five shillings a week as a labouring man.

How long was Dwyer in your employment?—Seven or eight months. Kerwick lived with me for four years.

How did Kerwick conduct himself?—I found him always just and honest.

Have you any reason to know that you and your family were obnoxious to the common people of the country?—Yes. In the month of September last there was a gun and a pistol taken from me.

Did they take any property?—They did: they broke my desk, and took away all my papers; they said they would put the tythe business under foot.

Did you, since that period, sleep in your house?—I did not; they threatened to shoot me.

Whom did you leave in your house?—I left the prisoner Kerwick, and a man of the name of Cummins.

Was your wife in the house?—She was, and two servant maids, and my father, an old man of 96 years of age.

Did you hear of the robbery of the guards of the mail coach at the turnpike-gate?—I did, on the next morning, when the army came; they sent for me; it was then about half an hour after day-light; the prisoners might have gone away from the army if they liked.

[Here the Court ordered the witness, serjeant Sherlock, to be called.—He said, that the prisoners were in close custody from the time of his surrounding the house, and that they could not have escaped.]

*Ann Mills* sworn.—Examined by Mr. Campbell.

You are the wife of the last witness?—I am.

Do you recollect the night when the mail-coach was attacked?—I do.

What was the first thing that occurred to your attention?—I thought the mob were coming to attack my own house, and to murder me, as they had done before.

When you heard the noise, did you say any thing?—I did. I called my girls and desired Mary Ryan to light a candle; I then went into where the men were, and I pulled them by the hair of their head, Kerwick and Dwyer. They jumped out of bed, and took up pitchforks and shovels, they had no other weapons in the house.

Was any thing done with the feather-bed?—Yes, it was put into the window to stop the balls.

Did you hear the persons who attacked the house say any thing remarkable?—I heard the robbers crying out, let every one be on their own post; and at the same time they fired a shot.

Did this happen before the mail-coach came up to the door?—It did.

Did you see any person?—I did not; I watched my boys so close, because my life was in their hands.

Did you move any other part of your furniture?—Yes; we put a large kitchen tub against the street door, and the—in the parlour window.

From the time you first heard the noise, were those two men Kerwick and Dwyer, outside your door?—They were not.

*Mary Ryan* and *Daniel Cummins* corroborated the evidence of the two last witnesses. During their examination, serjeant Sherlock and the guards of the mail-coach were called up again, for the purpose of discrediting their testimony; and though a considerable time was employed in examining and re-examining these witnesses, yet nothing of consequence occurred to weaken the effect of the evidence given on the part of the prisoners.

*James Murphy* was examined as to the characters of the prisoners. He said he knew Kerwick for four years past, and that his general character was that of an honest and correct young man—he never heard any thing laid to his charge.

Rev. *James Slattery* said, that he was prisoner's parish priest; that he had known Andrew Kerwick while he was in the service of John Mills, and he never knew a young man of better conduct or character; he said it was his business to watch over them, and he trusted to heaven, that he believed them as innocent of the crime of which they were charged as he was himself.

The prisoner closed his Defence.

The Chief Baron ordered the witness Gibbon to be called up again, to explain a material variance which occurred between his evidence, as given this day, and the facts stated in his information before the magistrate;—in the former, he was only able to identify Kerwick; in the latter, he had sworn positively, that he had known the two prisoners Dwyer and Kerwick. On his re-examination, he said, that he thought they had both been the sons of the man who kept the turnpike.—This was a circumstance which could not fail to excite a reasonable doubt in the minds of the jury.

Lord Norbury charged the jury, and most minutely recapitulated the whole of the evidence. The only question for their consideration was, whether they would believe the evidence given on the part of the Crown, or that on the part of the prisoner.

The Jury, after deliberating an hour, returned their verdict—NOT GUILTY.

Tuesday, February 5th.

JAMES KITCHEN was indicted, under Lord Ellenborough's act, for firing a loaded gun at John Sauce, with the intent to murder him.



## WITNESSES FOR THE PROSECUTION.

*John Sauce* sworn.—Examined by the *Solicitor General*.

Do you know James Kitchen?—I do.

Turn to the bar, and point him out to the court and the jury.

[Witness put the sheriff's rod on the prisoner's head.]

Do you recollect having been travelling in the month of October last?—I do; it was on Sunday, I believe on the 28th October; my wife was riding behind me.

Did anything happen to you?—I was riding home, and there was a shot fired; my wife called out to me to turn back, and save my life.

Do you know the man who fired the shot?—No; but a man came over the ditch out of a field, and said his name was Sheamus Bury. I asked him what was his meaning for firing at me; he made no answer at all, but said his name was Sheamus Bury, on his own ground, and he cared for no person. The shot was fired at the distance of sixty or eighty yards; there were more than five persons present, but can't tell whether it was from among them that the prisoner came; he heard a gentleman speaking to the prisoner, and saying he would have him; the prisoner replied, that his name was Sheamus Bury, on his own ground, and he cared for nobody.

*Mr. Mac Nally* said, as the witness had given no evidence to sustain the indictment, he would not ask him any questions.

*Dennis Fine* sworn.—Examined by *Sergeant Moore*.

Do you know John Sauce?—I do.

Were you in his company on the 28th October last?—Yes; I saw him and his wife riding on the road on one horse.

Did you hear a shot fired?—Yes.

Who fired it?—James Kitchen.

Put the rod on his head [Witness identified the prisoner.]

In what direction did he fire the shot?—Down the road against him.

What arms had he?—I saw him put his hand in his bosom, and bring out a pistol.

How far were Sauce and his wife off?—About 15 or 18 yards.

*Dennis Fine*, cross-examined by *Mr. Mac Nally*.

Witness could not say whether the prisoner fired at Sauce; he could not tell that the prisoner acted maliciously—he did not hear them speaking together—after firing the shot he went inside the road—he could not swear that it was not 40 yards distance, but believed it from 15 to 18.

*Mr. Sergeant Moore* observed, that the lawless banditti of this country shot at persons without assigning any cause.

*Mr. Mac Nally* replied, that, perhaps, they

had had a peculiar respect for him; he had passed through the country perfectly safe, and he had no doubt, that they would suffer him to repass to town unmolested.

*Margaret Sauce* sworn.—Examined by *Mr. Pennyfather*.

The witness could not speak English—and, after the interpreter was sworn,

*Mr. Mac Nally* requested their lordships to give special directions to him (the interpreter, to give a literal translation of the answers of the witness. He (*Mr. Mac Nally*) recollected a cause tried at Waterford, where three innocent men were nearly convicted, on the false translation of the witness's answers.

This caution of *Mr. Mac Nally*'s turned out, in the course of the examination of *Margaret Sauce*, to be essentially necessary; as he detected the interpreter, on the suggestion of *Mr. Kernan*, in giving a much fuller answer to a question, than was given by the witness. It did not appear that the interpreter had done so intentionally.

[The evidence of *Margaret Sauce* is not material, as it did not sustain the indictment, but was a repetition of the same story told by her husband.]

Prosecution closed on behalf of the Crown.

*Mr. Mac Nally* did not think it necessary to examine witnesses.

The *Chief Baron* charged the jury briefly in these words:—"Gentlemen of the Jury—you must acquit the prisoner; there is not a tittle of evidence to sustain the indictment. I have no doubt that the act of the prisoner was a most wicked and abominable outrage; but I cannot suffer a case to go to you, without making this observation, that, in my opinion it does not come under the act, called *Lord Ellenborough's act*, and therefore it is your duty to acquit the prisoner accordingly."

The Jury, therefore, acquitted the prisoner.

*DAVID LAMY* was indicted under *Lord Ellenborough's act*, for firing a gun, loaded with ball, at *George Moore*, with intent to kill him.

## EVIDENCE FOR THE PROSECUTION.

*George Moore* sworn.—Examined by the *Solicitor General*.

Do you know David Lamy?—I do.

Turn, and see if you observe him in court—[Witness identified him.]—Do you recollect the 4th of September last?—I do; I was in the parish of *Ballybacon* on that day: *Arthur Malowney* and *John Hewson* were with me.

What were you doing?—Valuing tithes.

Did you see any persons come to your party?—I did; two.

Did you know them?—*David Lamy*, the prisoner, was one of them.

Had both those men arms?—They had.

What arms?—One had a short piece, and the other had pistols.

How near did they approach you?—Within about 12 yards; they desired us to stand, and presented their pieces.

What did you see after that?—One of them came up, and demanded our books. Lamy stood at the present, while the other demanded our books. We gave them our books; they then swore us never to go back, to value tithes, to the parish of Ballybacon, nor to follow any business of the sort. They then searched our pockets, desired us to go off, and after going some distance, one of them fired at us.

What distance had you then gone?—It might have been fifty yards; one shot only was discharged at that time.

Did the shot take effect?—Some of the slugs were received by Malowney on the back of his head.

After the first shot, did you see any more of these men?—Yes; they followed us a second time, and in four or five minutes they came up to us; they desired Malowney to stand were he was; I was a few paces in front; when they came up to me, they put me on my knees to shoot me.

When you were on your knees, did they do any thing?—Yes; Lamy came up, knocked me down with his piece, and when I was down, stamped on my body.

Were you able to get away?—I was severely bruised and cut.

What happened after?—When we got up from our knees, they desired us to walk off, and we had gone about seventy yards, when another shot was fired from the same direction. I received three or four of the slugs in the cape of my coat, and some in my hat.

Do you know where Hewson is now?—In Artfellen; Malowney is dead and buried.

Lord Chief Baron.—Can you say who fired the shot, which hit the cape of your coat and hat?—No, my lord.

Mr. Solicitor General.—Do you know how Malowney came by his death?

Mr. Mac Nally objected to this question, Malowney having been killed after the transaction laid in the indictment.

The Chief Baron thought it was not evidence.

The cross examination was not material.

Colonel Bagwell sworn.—Examined by Mr. Sergeant Moore.

Did you know a person of the name of Arthur Malowney?—I did.

Mr. Mac Nally begged to make a preliminary observation, and to ask the colonel one question.

At the time you took Malowney's information, was the prisoner Lamy present?—He was not.

Mr. Mac Nally then insisted, that, under the statute of Philip and Mary, the information, in order to become legal evidence, must not only be before a magistrate, but before the party.

The Solicitor General contended, that that part of the act alluded to had been repealed by several subsequent statutes; and cited the case of the king against Flin and others, for the murder of Thady Lavin, tried at the special commission, held at Castlebar, before lord chief justice Downes, and reported by Mr. Ridgeway.\*

The Court over-ruled the point made by Mr. Mac Nally—lord Norbury thought it a monstrous position.

Mr. Mac Nally said, that where so many great guns were brought down against the prisoners, he thought he might be indulged with an explosion from his pocket-pistol, "in *favorem vite*."

[Here the clerk of the crown read, as evidence, the examinations of Malowney, taken before col. Bagwell. The facts stated, so exactly corresponded with the evidence given by the first witness, that it is not necessary to state them.]

Dr. Nelligan gave evidence of Hewson's ill state of health, and being unable to attend as a witness.

#### WITNESSES FOR THE PRISONER.

Henry Lewis sworn.—Examined by Mr. Mac Nally.

Do you know the parish of Ballybacon?—I live in it. I recollect the day when the shot was fired. I was out with lord Donoughmore's dogs. I was passing down the side of a hill when I met the prisoner, making a turf-stack; it was about three or four miles from where the shot was fired.

Laurence Shea proved an alibi, and corroborated the evidence of Lewis.

Counsel for the crown, in order to discredit the evidence given by the two last witnesses, produced

J. Clutterbuck, esq.—He said, Lewis, the first witness, was a man not to be credited on his oath.

Lord Norbury charged the jury, and recapitulated the evidence, which so strongly demonstrated the guilt of the prisoner, as to render it unnecessary for his lordship to make any observation.

The jury retired for a few minutes, and returned their verdict—Guilty.

The Solicitor General addressed their lordships, and said, that it became a painful part of his duty to call for the judgment of the

\* How. St. Tr.

Court, in order to connect the sentence as nearly as possible with the conviction.

The *Clerk of the Crown* then asked the prisoner, if he had any thing to say why sentence of death should not be pronounced against him.—The prisoner made no reply.

Lord *Norbury*, in an awful and impressive manner, pronounced the sentence.

MAURICE MURPHY was indicted for felony and robbery, committed on the highway, on the 19th December, 1810:

#### EVIDENCE FOR THE PROSECUTION.

*Edward O'Maher*, esq. sworn.—Examined by Mr. Sergeant *Moore*.

Where do you live?—In this county.

Were you driving in your carriage on the 19th December last?—Yes; accompanied by my brother, and two servants.

Did you meet with any thing that obstructed your travelling?—Yes; at about two or three o'clock in the day, I observed two men standing near the river; they came towards the carriage, and one of them presented a blunderbuss, and desired me to stop, and to deliver what money I had; I handed them out my pocket-book, containing bank notes to the amount of 11*l.* 2*s.* 5*d.*

Did you know either of the men?—I did not.

Turn round to the bar?—I do not see the man who robbed me. The prisoner at the bar was not the man who came to the window.

*John Heffernan* sworn.—Examined by the *Solicitor General*.

What employment have you?—I live as servant with Mr. *Maher*, of Marvel-hill—I am his coachman.

Were you driving him when he was robbed in December last?—I was.

How many persons were concerned?—Two.

Would you know either of them?—I am sure I should. [Witness identified the prisoner].

Have you any doubt of the prisoner?—Not the least—he was the man.

Was he the person who came up to the coach-window?—No; the second man. He stood out of the road of the carriage.

Do you recollect at what time, after the robbery, you were called on to point out the robber in the guard-house?—I do.

When you went into that room, was the prisoner there?—He was.

Did you point him out?—No; I was advised by Mr. *Archer Buller* not to point out the person, until I came out to my master. I pointed out a police-man.

Have you at this moment any doubt?—Not the least in the world.

*John Heffernan* cross-examined by Mr. *Grace*.

Nothing occurred to discredit the witness's direct examination.

Mr. *Denis O'Maher* was examined, and corroborated the evidence of his brother, the first witness.

Here the prosecution closed.

The prisoner examined no witnesses.

The *Chief Baron* said, the indictment was so clearly sustained by evidence, that it was not necessary for him to consume the public time by making observations on the testimony of the witnesses for the crown. The only question for the consideration of the jury was, whether the prisoner was one of the two men who robbed Mr. *O'Maher*. He (the prisoner) had been positively sworn to by the servant, and it was for the jury, under all the circumstances of the case, to draw their conclusion. The prisoner has called no witnesses, and therefore, if they believed the coachman, the guilt of the prisoner, in point of law, was established, and they ought to find him guilty.

The jury found their verdict—Guilty.

HENRY HOGAN was indicted, under lord *Ellenborough's* act, for firing a gun at *Lowry Williamson*, loaded with ball, with intent to kill. There were two other counts in the indictment, founded on the same statute.

#### EVIDENCE FOR THE PROSECUTION.

*Lowry Williamson* sworn.—Examined by the *Solicitor General*.

You are a soldier belonging to the *Monaghan militia*?—I am.

Do you recollect having been out on duty on the 2nd of last month?—I do; there were six of us and a corporal; we were under the command of a permanent serjeant.

Do you recollect having fallen in with a person of the name of *Henry Hogan*?—I do.

Do you observe him in court?—[Witness identified the prisoner].

Was there any person with him?—There was another; one of them was armed with a blunderbuss, and the other with a fowling-piece; *Hogan* had the blunderbuss.

Did either of them do any thing?—They both came up together; and when just coming forward towards me, the man who had the fowling-piece snapped it, and burned priming.

How was it pointed at the time?—I am not certain. The fowling-piece was directed towards the party. I then took hold of him, and said he was my prisoner, and I shouted for assistance from the guard. The blunderbuss was against my left breast, but I cannot say whether he snapt it or not.

Did you try if the piece was loaded?—The blunderbuss was loaded.

*Leury Williamson* cross-examined by  
*Mr. Mac Nally.*

Witness said that he could not say that the prisoner took aim at any particular person.

*Mr. Mac Nally* said he would ask the witness no more questions. He always thought it his duty, when the indictment was not sustained by evidence, to leave the case with the Court, who were counsel for the prisoner.

The *Chief Baron* concurred with *Mr. Mac Nally* in opinion, that there was not evidence to sustain an indictment, under lord Ellenborough's act, and expressed his surprise, that the indictment was not framed on the White-boy act.

*Corporal Hawthorn* sworn.—Examined by  
*Mr. Sergeant Moore.*

Witness said, he heard the prisoner damn the blunderbuss for not going off; had it done its business, he would then be contented to die; he said, in the guard-house, that if he had the priest with him for 15 minutes, he did not care what they did with him, the guard might laugh, but if the French came, he would then be laughing at them.

Lord *Norbury* charged the jury. He said, in point of law, there was no evidence to support the indictment, and therefore they ought to acquit the prisoner. Verdict.—NOT GUILTY.

PAT. DWYER, EDWARD DAWSON, WILLIAM RYAN, JOHN LAUGHLIN, PAT. CORBET, RICHARD CULLEN, WILLIAM KEARDY, THOMAS SHEA, JOHN DWYER, DANIEL GRIFFIN, and WILLIAM DWYER, were severally indicted, under the Riot and White-Boy acts, 29 Geo. 2, cap. 12, and 15 and 16 Geo. 3, cap. 21, for assuming the name of Caravats, and for unlawfully sounding a horn, with intent to excite a riot, &c. The indictment contained several other counts, under the above statutes.

#### EVIDENCE FOR THE PROSECUTION.

*Patrick Carroll* sworn.—Examined by the  
*Solicitor General.*

What employment have you?—I am a police-man; I was sent out on duty, in the month of September last, with a serjeant's guard. There were several shots fired, at about a mile from town.

What did you do?—I desired the men to prime and load; as we advanced there were more shots fired, and we heard a horn sounding.

At what hour of the night?—About one or two o'clock.

Did you see any number of persons after?—I did.

How soon?—In about half an hour.

How many in number?—Upwards of an hundred on the road.

Did you call out to them?—Yes; I desired them to stand, and give themselves up; and if they did not, that we would fire upon them.

Did they stand?—No; they ran off in different directions.

Did you pursue them?—I did.

Did you come up to a house?—I did.

Was there any light in it?—Yes; and a large fire.

Did you find any men in that House?—Yes; about 10 or 11.

Were they in bed?—They were in bed, with their clothes on.

Did you search the house?—We did; one of the soldiers brought me a gun out of the corner of the room.

Was it loaded?—It was primed, and loaded with ball, and cocked.

Did you examine any other place?—I did; a back house, and I found the barrel of a gun and a bayonet.

Do you see in court any of those men?—[Witness identified the prisoners] I left the 10 men in charge of the army.

*Serjeant Blakeney* sworn.—Examined by  
*Mr. Sergeant Moore.*

Were you on duty at night in the latter end of September?—I was.

Did you come up with any people?—We did. We heard a great number of voices, and some shots fired, the whole night, in the direction we were going; we met upwards of an hundred persons; I ordered them to stand; they ran off; we fired at them, and pursued and took a number of them.

Did you see a house near to where you met them?—Yes; the house was about 40 yards distance.

How many persons did you find in the house?—About 9 or 10. There was a large fire. We found arms, and some persons lying under a bed, and some on the bed. There was not a man found in the house that had not his clothes on; those found in the house were taken into custody, and marched into Cashel.

Did you search outside the house?—We did, and took one man hiding in the potatoe bins; I told him I would shoot him if he did not stand.

The prisoners called witnesses to their general character.

Lord *Norbury* charged the jury. He observed, that the prisoners were not indicted capitally, and if they believed the evidence on part of the prosecution, their guilt was complete; and they, the jury, ought to find him guilty. Verdict.—GUILTY.

Sentence. To be imprisoned one year, and whipped.

HENRY HOGAN, who was yesterday tried and acquitted, for firing a loaded gun,

&c. with intent to kill, &c. was now given in charge to the jury, and indicted for receiving a stolen blunderbuss, knowing it to have been stolen; he was also indicted, under the White-boy act, for illegally appearing in arms by night.

EVIDENCE FOR THE PROSECUTION.

*Lowry Williamson* sworn.—Examined by *Mr. Penefather*.

This witness gave the same evidence as on the former trial of the prisoner, with this addition, he said that the blunderbuss produced to him was the very piece which he found in the possession of the prisoner at the bar, on the first of January.

*Patrick Gibbons*, one of the guards of the mail-coach, also proved the identity of the blunderbuss; and said it was the same which had been robbed from him by the party at the turnpike-gate, on Sunday, the 28th November last.

*Patrick Gibbons* cross-examined by *Mr. Mac Nally*.

You understand the use of fire arms?—Yes; I have a good right; I was nine years serving his majesty.

God forbid he had many such soldiers: why didn't you make a better use of your fire arms, on the night you were attacked?—Because I could not get at them.

*Lord Norbury* charged the jury, he stated the nature of the offence, in point of law; and told the jury, that if they believed that the blunderbuss found on the prisoner was that which was taken from the guard of the mail-coach, they ought to find the prisoner guilty. Verdict, GUILTY.

Sentence. To be whipped on the 9th February, 16th May, and 15th July.

—  
*Wednesday, February 6.*

*JOHN CORCORAN, WILLIAM CREHAN, CORNELIUS HICKEY, and PHILIP CODEY*, were capitally indicted for an assault on *James Slattery*, on the 6th of November, 1810, and for firing a loaded gun at him, with intent to kill and murder, &c. and also for unlawfully assuming the name of *Caravat*, and appearing in arms by night.

EVIDENCE FOR THE PROSECUTION.

*James Slattery* sworn.—Examined by the *Solicitor General*.

Do you recollect the 6th of November last?—I do.

Do you remember the races of Coolmoyno?—I do.

Were you there?—I was.

Who was with you?—About twenty men and boys, and neighbours.

Do you recollect meeting with any person

at the verge of the race-course?—We met a man, who desired us to turn in off the road; that if we went out we would be shot. There were about twenty men then coming home.

Did you return?—Yes, we returned to the course, lest we might endanger our lives.

Did you see any party of men?—About fifteen followed us to the course; they were all armed with guns, bayonets, and pistols.

Did they fire any shots?—When they came up to the gate, they fired off shots.

How far did they follow you?—I believe, about a quarter of a mile.

At the time those men began to pursue you, had you any arms?—We had not; we armed ourselves with stones, when we saw that some of them fired.

How many shots?—About 7 or 8; some missed fire. We then attacked them, and pursued them, and disarmed some of them; we took two guns, a blunderbuss, and pistol.

What then happened?—John Corcoran then came up and gave me a stroke with a stone in the mouth, knocked two of my teeth out, and made me stagger back, and presented a gun at me, which missed fire; he presented a gun at me, while I was down in the dyke.

*Lord Chief Baron*.—Explain what you mean by missed fire?—He pulled the trigger and snapped; then another boy came up, and knocked the gun out of his hand with a stone.

Did any other person then fire a gun?—Yes; *William Crehan*.

Was *Crehan* of that party?—Yes.

What weapon had he?—A blunderbuss.

Did you see him on that day fire a shot?—I did not.

Look round, and shew me any other of the party?—I can't prove against any of the rest.

What did you do with the guns?—We gave them up to the magistrate, *Mr. Bradshaw*, on Saturday, and on Monday we lodged examinations.

Did you, or any of your friends, make any attack, until the party pursued you?—We did not.

Cross-examined by *Mr. Mac Nally*.

What brought you and twenty of *de boys* to the race course?—To see the amusement.

Why did you return in such a body?—For fear of being way-laid.

What's the English of the word *Shanavest*?—I can't tell.

You know it perfectly well. Is it not the name of a party in this country?—It is.

Now of the twenty of your party, were there not 18 or 19 of them *Shanavests*?—We were.

You have made yourself a *Shanavest* without any one asking you the question. When you said *de boys*, didn't you mean the rioters?—No.

*Lord Chief Baron*.—What was the other party called?—*Caravats*.

Has there not been a wicked and malicious enmity subsisting between those who call

themselves Shanavests and Caravats?—They are often quarrelling.

Didn't you and *de boys* expect a quarrel?—No.

By virtue of your oath, don't you believe that some of the 19 Shanavests had arms?—I believe they had not.

Have you not heard that they assembled with arms on another day?—By God, I don't know.

By the *Chief Baron*.—Don't you believe the Shanavests took arms by night?—I believe they did.

And the Caravats?—I believe they did.

By virtue of your oath, has there not been a quarrel between the Shanavests and Caravats?—There was.

If a Shanavest be determined to take away the life of a Caravat, is it not the same crime to do it by false swearing as by dashing out his brains with a stone?—I believe it is.

Do you believe that Hickey was there?—He might, but witness never swore informations against Hickey.

Did you come as a Shanavest for the sake of public justice, or from resentment against the Caravats?—[Witness hesitated].

*Chief Baron*.—What was your motive?—Because they came to take away my life on that day, I come to prosecute them for the sake of public justice, he swore the informations before captain Wilcocks.

Don't you believe you screen yourself from justice, by this prosecution?—No.

By *Lord Norbury*.—Had you or any of your party any fight with that body of men, before the riot at the races?—Yes, my lord; one day coming from Feathard, we had a battle, the first Sunday in August.

*Chief Baron*.—What is the cause of quarrel between these two parties, the Shanavests and Caravats?—I don't know.

What's the true reason?—Indeed I can't tell.

So then, according to your account, I am to understand that each party attacks the other by way of defence.

*Question* by a *Juror*.—Were the men who were concerned in the affray in the month of August, the same that were concerned at the races of Coolmoynce?—They were.

Do you know a man of the name of Pauddeen Gar?—I do.

He is your uncle.—Was not he the principal ringleader and commander of the army of Shanavests?—He is a poor old man, and not able to take command.

By *Lord Norbury*.—What was the first cause of quarrel?—It was the same foolish dispute made about May balls.

By the *Chief Baron*.—Which is the oldest party?—The Caravats were going on for two years before the Shanavests stirred.

Why were they called Caravats?—A man of the name of Hanly was hanged; he was

prosecuted by the Shanavests, and Pauddeen Gar said he would not leave the place of execution, till he saw the Caravat about the fellow's neck; and from that time they were called Caravats.

For what offence was Hanly hanged?—For burning the house of a man, who had taken land over his neighbour's head.

Hanly was the leader of the Caravats?—Before he was hanged his party was called the Moyle Rangers.—The Shanavests were called Pauddeen Gar's party.

Why were they called Shanavests?—Because they wore old waistcoats.

*Nich. Saxton* examined by *Mr. Prendergast*.

This witness corroborated the evidence of *James Slattery*. His evidence was exactly similar with that given by the former witness: he gave precisely the same history of the first origin of the party of Caravats and Shanavests; and proved that all those connected in their illegal associations, had no other object in taking up arms, than to defend themselves against the attacks of each other.

*Ben. Bradshaw*, esq. examined.

Did you examine the arms delivered to you by *N. Saxton* and *Slattery*?—I did; there was one of the guns loaded.

Prosecution on part of the crown closed.

#### EVIDENCE FOR THE PRISONER.

*Rev. John Ryan*, parish priest of Feathard, sworn.—Examined by *Mr. Campbell*.

How long have you been parish priest of Feathard?—Eight years last October.

Are you acquainted with all your parishioners?—Yes.

Do you know a boy of the name of Hickey?—Perfectly well.

Do you recollect the races of Coolmoynce, in the month of September?—I do; I was at the races on the day of the fight, and heard a shot fired in the direction the Shanavests were.

Had you any official duty to perform on that day?—Yes; I had to baptise a child.

Do you recollect whether there were many present at the baptism?—There were.

At what hour did you baptise the child?—I can't exactly recollect. It was about night fall.

Was the prisoner Hickey present?—He was one of the sponserers.

Was Hickey in the house when you arrived there?—No; but he came in a few minutes after.

*Lord Chief Baron*.—How far is that house from the race ground?—Two miles by the road, and about one across the country.

Are you acquainted with a man of the name of *Saxton*?—I am.

*Lord Chief Baron*.—With respect to him, you can only be asked the general question, namely, whether *Saxton* the witness is a man

to be credited on his oath?—He is spoken of as a notorious quarreller, but I can't say whether he ought to be believed on his oath.

Rev. John Ryan cross-examined by the *Solicitor General*.

Witness said, that at the fair, he saw some of the Shanavests strike the Caravats.

*Lord Chief Baron*.—Is it notorious in the parish, who are Shanavests, and who are Caravats?—It is.

From a gentleman of your appearance and manners, I should wish to be informed what is the real cause of quarrel?—I never could find out the real cause.

*Lord Norbury*.—Do the feuds of those insurgents prevent their attending divine service?—No, my lord; both Shanavests and Caravats attend divine service, indiscriminately.

*Lord Norbury*.—I wish, sir, you could restore peace and comfort to your flock; if they would take your advice, we should have no occasion of visiting your country at this inclement season of the year.

*Mr. Solicitor General*.—Do you consider those feuds, as they are called, confined to the lower orders?—I think they are; I am not sure whether any respectable parishioner has joined them.

Can you form any opinion whether one party is more criminal than the other?—I cannot; they are equally criminal; but the taking of arms is confined exclusively to the two parties concerned in those feuds.

The counsel for the prisoners closed their case, and advised them not to call any more witnesses. One of the prisoners insisted on calling one of the jury to his character: the juror was sworn, but gave the very reverse of a good character to the prisoner. At the request of the prisoners, some other witnesses were examined. Their evidence was not important.

The trial had proceeded thus far, when the Chief Baron observed a fatal error in the capital part of the indictment.

*Mr. Mac Nally* insisted, that the prisoners should be given in charge to the jury, and acquitted, previous to the sending up, and finding of a new indictment. The court concurred, and they were then given in charge, and acquitted of the capital indictment, but found guilty of a misdemeanor, viz. of illegally assuming the name of Caravat, and appearing in arms.

They were then sentenced to be whipped on the 11th of February 11th of May, and 2nd of July.

*Thursday, February 7th.*

THOMAS POWER was given in charge to the jury, and indicted for the murder of Arthur Malowney, at Ballybacon, on the 21st November, 1810.

# EVIDENCE FOR THE PROSECUTION.

*Edward Prendergast* sworn.—Examined by the *Solicitor-General*.

Are you a police constable?—Yes.

Do you know Thomas Power?—I do.—

[Witness identified the prisoner.]

How long have you known him?—As long as I know any man.

Do you recollect having been called out on duty, with two others, who went to value the tithes of the parish of Ballybacon?—Yes, with Arthur Malowney and George Moore.

How many constables went with you?—Four, and the two men themselves. The day was the 21st of November last.

*Lord Chief Baron*.—How were the four men armed?—With guns and pistols.

What was the first thing that happened?—When we were going through Ballybacon, there were some shots fired at us over a wall.

Did you see the persons that fired them?—Not until after the shots were fired.

Did any of them take effect on you?—Yes, I received ten slugs. After the shots were fired, the persons came over the wall.

How many in number were there?—From fourteen to twenty persons.

Were they all armed?—They were, with guns and short pistols; three of them fired.

After the firing, what did you do?—We ran back to the house of Thomas Shea; the persons who came over the wall advanced, and we ran to the house of Shea for protection; I was one of the last that came up; we shut the door, and I put a small bit of stick into the bolt.

What did the party then do?—They came up, and called out for the Ardinnan constables to turn out; some of them got into the lower part of the house, through the window; and one of them seized my piece, and fired his pistol at me.

Where was Malowney at this time?—He was above in another part of the house. Some time after they got into the house, Malowney was standing near me, and one of them seized and dragged him behind me; I then took hold of him, and dragged him back again. I was knocked down, and after I got up again, I saw Malowney, and some of the men striking at him on the head with pistols and guns.

How many were striking at him?—Three or four were striking, and there were eight or nine about him; he fell on his face and hands on the ground.

Was he struck when in that situation?—I cannot tell that. George Moore said, go out of the way, for I believe the design is against you and Malowney.

Did you make your escape?—I did. The last place I saw Malowney, he was lying on his face and hands on the ground.

Look about the court, and say if you discover any person who was one of the party?—I see a man who was standing outside of the house with a gun in his hand: I mean the man in the dock, Thomas Power.

At what hour of the day did the transaction take place, which you have related?—About one or two o'clock, to the best of my belief; some of the persons had their faces blackened, and others were disguised.

How near to the house was the prisoner standing?—About 40 or 50 yards.

Did you ever see Malowney again?—I believe he was dead before I left the house. I saw him again at the inquest.

[The cross-examination was not material.]

*George Moore* sworn.—Examined by  
Mr. Sergeant *Moore*.

Do you recollect what happened at Tom Shea's house on the 21st of November last?—I do.

How many persons attacked the constables on that day?—There could not be less than from thirteen to fourteen; every one of them was well armed. They fired on the constables; we fled to Shea's house for safety.

Can you tell how soon after you were pursued?—In two or three minutes; some of them forced their way into the window.

Who were in the room when those persons forced their way into the window?—M'Cabe, Prendergast, Cowan, and Malowney.

What did you see them do?—They were all striking at Malowney, and Prendergast and Hewson were striving to save him; they were striking Malowney with their arms. Hewson told us, now was the time to make our escape. M'Cabe got out, and I then fled as fast as I could.

Were there any shots fired after you?—There were, when we had gotten about 70 or 80 yards from the house.

Did you see the persons who fired them?—I did not.

Did you know any of the persons concerned in the outrage?—I did not. I saw Malowney when I went off; and when I returned, I found him dead in the room where I had left him.

Here counsel for the crown produced witnesses, to show, that Hewson, one of the constables, was prevented by illness from attending to give evidence.

Here the case closed on part of the crown.

#### PRISONER'S DEFENCE.

Several witnesses were produced to prove an alibi. The substance of their evidence was, that, at the time Malowney, the deceased, was murdered, the prisoner had been employed in gathering dung at his father's house. In their calculation of time, the witnesses were very inaccurate, and in their account of several circumstances differed from each other.

The Rev. *David Farrell* said, that he had known the prisoner for about 12 years—that his general character for the last six years was very good, but before that period, he was subject to intoxication.

The Lord Chief Baron recapitulated the evi-

dence, and told the jury, that if they believed the witnesses produced by the crown, the indictment was sustained, and they ought to find the prisoner guilty. But if, on the contrary, they believed the evidence given on part of the prisoner, they ought to acquit him. His lordship had no doubt that their verdict would satisfy themselves, and the public.—Verdict—GUILTY.

Immediately after, the prisoner received sentence of death, and was ordered to be executed on Saturday.

*MICHAEL FOLEY* was given in charge to the jury, and indicted for assaulting *Henry Grady*, a soldier, on guard, on the 11th of Nov. 1810, with intent to rob him of his firelock.

*Henry Grady* sworn and examined.

What regiment do you belong to?—To the Roscommon militia.

Were you on guard at Carrick-on-Suir, on the 11th of November.—I was; two men came up, and asked me what time of night it was.—[Witness identified the prisoner as one of them.]

Had you any conversation with them?—Yes; they invited me to go and drink with them; I told them I would drink none while I was on duty; they then went away, and soon after returned, and again asked me to drink with them, and this man [pointing to the bar] put his hand in his pocket, and pulled out silver, and desired me to go and drink myself; I said I would take neither money nor drink while I was on duty.

Did they go away that time?—They did.

Did you see them again that night?—Yes; in about a quarter of an hour after, they came up, and the other man said, are you on guard still? I suspected them, and told them, if they came up I would shoot them. He then seized the gun, and attempted to drag it from me. I cried out to the soldiers to come to my assistance; the other then said, pull it from the thief, pull it from him; I am positively certain the prisoner was one of the men.

*Charles O'Brien* sworn.—Examined by the  
*Solicitor-General*.

Proved that he had taken the prisoner, at about ten o'clock on the same night, and that he had found him bloody.

The prisoner called no witnesses.

*Lord Norbury* charged the jury.—He said, that the offence for which the prisoner was indicted was not capital—that if they believed the soldier's evidence, the guilt of the prisoner was complete.—Verdict—GUILTY.

Sentence.—Transportation for 7 years.

*JOHN LOWMEGAN* was given in charge to the jury, and indicted for an assault, with an intent to rob *Thomas Hayden* of a gun,



at Mullinahone, on the of September, 1810.

Mr. *Mac Nally* moved to put off the prisoner's trial until the assizes, on an affidavit, stating that the Rev. — Fox and — Power were material witnesses, without whose testimony he could not with safety to himself proceed to trial—that he had served those persons with crown summonses, and expected their attendance at the ensuing assizes. The affidavit further stated, that the prisoner had been but three days only in custody, and therefore, that he had not had time to prepare for his defence.

Mr. Sergeant *Moore* opposed the motion, on the ground that the prisoner had sufficient time since the commencement of the commission to prepare for his defence.

Lord *Norbury* concurred with the learned sergeant, and refused to put off the trial.

Mr. *Mac Nally* then said, he thought it a great hardship to force an unfortunate man to take his trial, whose witnesses had refused to attend; and that if, under such circumstances, the jury convicted him, their verdict would be founded on *ex parte* evidence.

The Chief Baron had gone to the other court, for the purpose of expediting the business, by trying some prisoners for misdemeanors.

#### EVIDENCE FOR THE CROWN.

*Thomas Hayden* sworn.—Examined by Sergeant *Moore*.

Where do you live?—In Dublin.

Had you been travelling from Mullinahone in the month of September last?—I was.

Had you any arms?—Yes; a double-barrelled gun. [Witness identified the prisoner.]

Did any thing happen to you?—The prisoner came from the right side of the road to the left, threw himself off a mule he had been riding on, and said, you must give me that gun; I said I would not; he then said, by G— he must have it, and at last he took it out of my possession; he then went to the side of the road, and put the gun across his knees; I had a double-barrelled pistol, which I got out of my pocket, while he was standing at the ditch; I cocked it, and attacked the prisoner, and got the gun back again; I have not the slightest doubt in the world of the prisoner being the man.

*Thomas Hayden* cross-examined by Mr. *Mac Nally*.

Is this the first time you appeared in the character of a prosecutor?—It is not.

Are you the celebrated Mr. *Thomas Hayden*, who prosecuted at Kill?—I am.

I know Dean *Stevenson*; do you recollect the question put to the dean on that occasion?—I do.

Did he not swear that you were not entitled

to be believed on your oath?—Something like that.

By virtue of your oath, don't you believe the dean swore truth?—I think he might be mistaken.

What did the jury believe?—They acquitted him.

Did you ever prosecute a man of the name of C—?—Yes; he was tried and convicted.

By virtue of your oath, was he not acquitted?—He was not.

Were you ever plaintiff in an action for defamation?—I was.

The action was brought for accusing you of perjury?

Lord *Norbury*.—Mr. *Mac Nally*, have you done with this witness?—I protest to God, my lord, my black-ball is out; the counsel for the crown may white-wash the witness, if they can.

Mr. *Solicitor-General*.—Did you ever see the prisoner before?—I never saw him, either before or since, till last Thursday; Mr. *Fox* told me, that the prisoner would give me 30 guineas, and submit, provided I did not prosecute him.

*John Oldice* sworn.—Examined by the *Solicitor-General*.

You have been sworn as constable to attend the army?—I have.

Did you ever see the prisoner in the guard-house?—I did.

What did you hear him say?—He whispered me that he would lodge a sum of money; if I would get Mr. *Hayden* to drop the business he would pay 100*l*.

*John Oldice* cross-examined by Mr. *Campbell*.

Did you go to see Miss *Lee Sugg* lately?—No.

How much did you give that lady to compound a felony?—I gave her 64*l*. for the purpose of discharging that business at the assizes.

Why did you offer that sum?—Because your friend there, Mr. *Mac Nally*, told me I would save myself a sound whipping, and I would rather be hanged forty times, than whipped once.

The crime was an assault to commit a rape?—Upon my word it was.

*William Toban*, a bailiff, was sworn, to prove that he had served crown summonses on the Rev. — Fox, and Mr. — Power.

Lord *Norbury* charged the jury.—His lordship minutely recapitulated the evidence, and said, he would leave the prisoner in the hands of the jury, whose province it was, to draw their conclusion from the facts stated by the witnesses.—Verdict.—GUILTY.

Sentence of death was immediately passed.

When the prisoner was asked by the clerk of the crown if he had any thing to say, why judgment of death should not pass against him; the prisoner said, it was a hard case that

a man's life should be taken away on such evidence as Hayden's, who would swear any thing for 100*l*. He said he was willing to die, but he was innocent of the crime. He was under a rent of 300*l*. a year and prayed for a long day to settle his affairs on his children.

TIMOTHY DWYER was given in charge to the jury, and indicted, under the 15th and 16th of the king, for feloniously assaulting the dwelling-house of William Kilfoyle, on the night of the 8th October, 1810. And also for sending a threatening letter, and for exciting tumultuous risings.

#### EVIDENCE FOR THE CROWN.

*William Kilfoyle* examined by  
*Mr. Solicitor General.*

Were you at Slane, on the night of the 8th of October last?—I was.

Did any persons come to your house on that night?—There did [witness identified the prisoner]; that man and three more.

Had they arms?—They attacked the door with stones; I had butter in the barn, where I was; I came up, and looked over the door.

Had you a full view of the dwelling-house door?—I had. One of them said, take this paper and put it on the door; and the prisoner put the paper on the door.

They didn't see you?—No; the barn door was locked outside.

Are you positively certain, that the man you call Timothy Dwyer, was the person who put the paper on the door?—I am. [Paper produced.]

Is that the paper?—I can't tell positively; to the best of my belief it is.

Have you any ill-will to the prisoner?—Not much.

[Cross-examination not material.]

*Joan Tobin Kilfoyle* examined.

You are the wife of the last witness?—I am.

Do you recollect the night your house was attacked?—I do; I saw a paper on the door in the morning, and I took it down, and brought it to the parish priest; and he said, I ought to take it to Mr. White, a magistrate, or to some other justice of peace.

Did John Lanergan read the paper for you?—He did.

*John Lanergan* called, and examined.

Did that woman give you a paper to read?—She did.

Would you know it again?—I would.

*Mr. White* called and examined.

Did that woman give you a paper to read?—She did.

Is that it?—It is.

[The paper was then read.]

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"I desire you, William Kilfoyle, to send back the furniture you have of the Shangers, without any charge, and some money to bear the expenses he has been at; or if you don't, your house and place will be burned and your cattle houghed without a doubt." (Signed)  
Captain SHANAVEST."

Prosecution closed.

The prisoner called no witnesses, except one to character.

Lord *Norbury* charged the jury. After minutely recapitulating the evidence, he observed, that the prisoner had called no witnesses; and therefore if they, the jury, believed those examined on part of the crown, they ought to find the prisoner guilty.—Verdict,—GUILTY.

Sentence of death was, immediately after the jury returned their verdict, pronounced by lord *Norbury*.

JAMES LANG was given in charge to the Jury and indicted for the murder of David Laughman.

#### EVIDENCE FOR THE CROWN.

*Michael Laughman* sworn.—Examined by  
*Mr. Sergeant Moore.*

Did you know a man of the name of David Laughman?—I did; he was my brother.

Is he living or dead?—He is dead.

Were you at the last fair at Cahir?—I was.

Was your brother there?—He was.

What happened to your brother on that day?—He was standing in the street of Cahir, in the evening of the fair day, when James Lang gave him a desperate blow of a wattle; there were five persons in company with James Lang.

Who was the first that struck your brother?—James Lang; my brother had done nothing to provoke him.

Was he knocked down?—A post kept him from falling.

Did he get more blows than one?—He got two kicks in the belly, and two strokes of the wattle.

How did he get the kicks in the belly?—Standing up.

Who gave him the kicks in the belly?—The prisoner.

Had Lang any ill-will towards him?—He had not; he did not see him before that day.

What did Lang say?—He came running down the street, and said, "here is Lang," and then gave my brother two blows with a wattle. He lived only from Friday evening till Monday morning, and he never got off his bed after. He was wounded in the belly—it had a red mark.

Point out James Lang, if you see him in court. [Witness identified the prisoner.] I am sure that is the man.

*Michael Laughman* cross-examined by  
*Mr. Campbell.*

Witness heard that there was a fight at the fair; he did not know that his brother was in a great passion—his brother had had no quarrel with Lang, or any one else.

*Thomas Guyrey* sworn.—Examined by the  
*Solicitor General.*

Were you at the fair of Cahir?—I was.

Did you see David Laughman there?—I did.

Did you see any thing happen to him there?—I saw James Lang coming down the street; he said here is Lang, and he gave Laughman two or three kicks.

Had he a wattle in his hand?—He had.

What did he do with it?—He made two strokes at Laughman.

Did he fall?—He staggered back, and a post kept him from falling.

How long after did he live?—From Friday till Monday.

Did David Laughman give any provocation?—He never found it out.

[Cross-examination not material.]

*Richard Doveran* examined.

You are a coroner for this county?—I am.

Did you see David Laughman in the month of—last?—I saw him dead, he had some white and red marks on the pit of his stomach, which seemed very much raised out.

Here the case for the crown closed.

WITNESSES FOR THE PRISONER.

*Mary Maher* sworn.—Examined by  
*Mr. Campbell.*

Were you at the fair of Cahir?—Yes.

There was a fight there on that day?—Yes.

How many were engaged?—I dont know; I saw David Laughman come up to James Lang, Laughman said, what made you abuse my brother?—Lang said, do you want satisfaction?—Laughman said, yes; and he gave Lang two strokes across the ear.

*Mary Maher* cross-examined by the  
*Solicitor General.*

Witness said that Lang did not say a word till Laughman struck him first; the fight began at the church; did not hear the prisoner say, "Here's Lang."

The first witness, Michael Laughman, was re-examined, and contradicted the evidence given by the last witness.—Verdict, GUILTY.

Sentence of Death was immediately pronounced.

WATERFORD, *Saturday, February 9th, 1811.*

INDICTMENT.

THOMAS BLAKE, THOMAS BRIEN, THOMAS MAHONY, JOHN BUTLER, JOHN CONNOLLY, JOHN DOWLEY, and PATRICK

BAKER, were given in charge to the Jury and severally indicted under the White-boy acts, 15 and 16 George 3rd for compelling John Flahavan, by threats and menaces to quit his farm; and also under Lord Ellenborough's act, for an assault on the said John Flahavan, by firing a gun at him, loaded with ball, with intent to kill him. They were also charged on several other indictments.

Mr. Sergeant Moore opened the prosecution with stating, that it had been customary, and indeed it was a necessary duty, upon occasions like the present, when the offences of the country called for the enforcement of a code of laws, not resorted to in the ordinary administration of justice, to make the particular case the medium of explaining to the public at large the nature and objects of those laws—their sanctions, penalties, and powers, and with due care, to avoid all statements which could aggravate the charges against the persons accused. Those have ever been considered as suitable opportunities, for general observations upon the existing disturbances, and the remedies which may be resorted to, for their correction; but this part of his duty he should reserve, until he had first briefly stated to the gentlemen of the jury the particular facts, which, if proved (as he conceived they would be most distinctly), went to constitute the several offences, with which the seven prisoners at the bar stood charged before them.

And here he observed, that the indictments, in the present case, imputed to the prisoners, (and the evidence, if believed, would substantiate against them) almost every capital offence, which a tumultuous assemblage of armed persons can commit, against the White-boy and other acts, enacted to prevent and punish unlawful risings of the people; and which acts, the very insurrection itself has revived and forced into operation. The prisoners are charged with having, in a tumultuous manner, assaulted and injured the habitation of Edward Flahavan, the prosecutor; with having forcibly, and by threats and menaces, caused him to open the door of his dwelling-house; with robbery of fire arms; with inflicting cruel corporal punishment upon the prosecutor, and his nephew, John Connor; with having administered an unlawful oath; and with attempting to compel, by force and intimidation, Edward Flahavan to quit his farm, abode, and lawful occupation. All these accumulated offences, being but the several branches of one solitary transaction, and the frightful guilt of a single visit, and forming in themselves a complete catalogue of the crimes, the frequency and enormity of which called for the issuing of the present special commission.

The dismal tale that would be related to the jury upon the oaths of Flahavan and Connor, to support the preceding charges, was to the following purport; namely, that the prosecutor, Edward Flahavan, had lately become tenant to two farms in the county of Waterford, and

having been once, before the transaction now under consideration, beaten, for having taken them, and threatened with still further outrage, by the insurgents, if he continued to occupy the lands; he had used the precaution of procuring his nephew, John Connor, to reside with him, and had given him a pistol, and some ammunition, with the approbation of a magistrate, for their protection; that in this state of imperfect security, and painful vigilance, the house of Flahavan, situate at Ballyduffe, was attacked, between the hours of seven and eight o'clock, in the evening of Tuesday, the 20th of November last, by a party of armed insurgents, who either forced the door, or caused the persons within to open it, under terror of the consequences of refusal, or resistance. That a party of eight persons, assuming the name of, and calling themselves, Caravats, rushed into the house, armed with pistols, a sword, and alpine sticks. Here the learned sergeant stated the alpine stick to be an instrument of punishment, used by the Caravats, and was, in fact, a young plant of ash, pulled up by the roots, the size of which depended upon the strength of the ruffian who had torn it from the earth; and when the fibrous parts of the root were cut off, the knob remaining at the end, made it a most formidable, and no doubt, frequently fatal weapon, in the hands of the robust ruffian, who was armed with it; the etymology, however, of the word alpine he had not yet been able distinctly to ascertain. Thus armed and prepared, for the furtherance of their system, by either inflicting death, or inspiring terror, this ferocious group first assailed Connor, who had bravely endeavoured to defend his master, by snatching up his pistol, and snapping it, without effect, at the party; but being soon disarmed, and brought to the ground, with repeated blows, they flogged him, in the most barbarous manner, with the alpine sticks, and wounded him severely with a spade. In the mean time, Flahavan seeing them engaged with Connor, had fled to his bed-room, and vainly thought to have escaped through the window; but his retreat was there cut off by two of the party outside, who had been posted there as sentinels, for the purpose.—The wretched victim of their savage resentment then attempted to conceal himself in the chimney of the bed-room; but he was soon discovered, and conducted by two of the party (one of whom assured him, on his honour, that he should not be injured) to the outer door of the house, where he was beaten with the alpine sticks, in a manner too shocking for minute description; and, as if to aggravate cruelty by dishonour, the faithless miscreant, who had pledged himself for Flahavan's protection, closed the atrocious scene, by kicking and trampling on the body of the prostrate object of his treachery.—They then dragged Flahavan into the house, and administered an oath to him, that he should give up both his farms the next morning. Whilst they were thus engaged, in punishing and swearing Flahavan, Connor,

who lay for a considerable time subdued and exhausted, seeing a favourable moment, by a critical effort of his remaining strength, effected his escape, through the window, and when the party found he was gone, they became alarmed, and fled; and probably, but for this occurrence, they would have proceeded to the commission of outrages, still more fatal in their consequences. This was the general outline of the case, which it was by no means his wish to colour or describe in any other terms, than such as the strictest investigation of the facts would justify; and the jury would do him the justice to recollect, that he had not used a single expression, to impute guilt to the prisoners, or to accuse them of this atrocious outrage, other than by stating them to be charged with it in the indictments. Let the rest come from the witnesses; and happy will he be, to hear the verdict of an acquittal, if the prosecutors, whilst they relate the melancholy history of their sufferings, shall be enabled to say, with pure consciences, that the prisoners at the bar were not the cause of them.

The learned sergeant then said, he would now say a few words upon the general state of the disturbed counties; the nature of the association, out of which the present disturbances have arisen, the extent of the danger, and the adequacy of legal remedy, to meet the mischief; and for himself, after much consideration of the subject, with some experience of the different systems, which insurgents have from time to time pursued in Ireland, from all he could learn from others, or observe himself, frightful as was the actual state of this, and of some neighbouring counties, at this moment, with the lower orders of the people rapidly acquiring arms, and the upper orders as rapidly losing them, still he had no hesitation to say (and he trusted it would afford some consolation to those, who might be terrified at the appearance of things) that his decided impression was, that these outrages were as yet unconnected with foreign agency; and that the associations of the insurgents had not hitherto assumed the character of treasonable conspiracy; but, he would go no farther—he would not willingly anticipate; he would not say to what evil purposes an overgrown banditti, unlawfully associated, formidable from their excesses, and having one common union in their criminality, might ultimately be perverted; but he would say (and he hoped it would rouse the country to timely exertion to put them down), that, at present, the insurgents were nothing more than a lawless ruffianly horde, armed to a certain extent, and confederated for the purpose of legislating for their timid or indolent neighbours; assuming a dominion over property of every description, and particularly with regard to the letting of lands; they force the labourer from his work—the tradesman from his occupation—the farmer from his lands—and those of the lower orders of every description, who do not join in their system, from their abodes—they infest the

public highways, spreading terror and desolation; they, in many instances, have compelled the innocent peasantry of the country to leave their humble cottages, and agrestic pursuits, and join in atrocities of every description; and so formidable are they become, that they can bring together whole columns of robust armed insurgents, to perpetrate their evil purposes. The country through which the commission has moved exhibits, in a great measure the frightful picture of an armed peasantry, and a disarmed gentry. In this state of things, the progress of audacious criminality is accelerated by the feeble resistance it has met with; the country, by not opposing, has tacitly submitted to this disorganization of all the social relations; all moral duties are in danger of being abandoned; all respect for the laws forgotten; outrage succeeds outrage, as the ordinary occurrence of every day—pillage and waste, robbery of arms, and of every other species of property, forcibly carrying away women, with intent to compel mercenary marriages, (no less than seven lately in one county); burning of houses, destroying of cattle, the violation of female chastity, murder, assassination; in a word every species of crime is committed, in the daring, but I trust mistaken confidence, that the system of terror will prevent the injured from bringing the perpetrators to justice; and, after ages of civilization the country exhibits many symptoms of former and returning barbarism.

The learned sergeant then stated, that a principal, and most alarming part of the system of those associated terrorists, was, a combination against the administration of justice;—this they attempt, by threatening, and endeavouring to terrify all persons engaged in it; magistrates, jurors, witnesses, were to be intimidated from the discharge of their respective duties; but he would not, for one moment, entertain even the suspicion, that either the magistrates, or jurors, could forget their solemn oaths, and sacred obligations, and compromise with guilt, to cultivate a mean and disgraceful popularity, or procure an imagined, but deceitful security for themselves. He could not think it possible, that any man, who regarded the peace of the country in which he was destined to live; who valued the blessings of protection to persons and property, could pause upon the choice he ought to make between order and confusion; licentiousness and obedience to the laws; or hesitate in discharging firmly and conscientiously his duty, between the midnight ruffian, and the peaceably disposed peasant—between the laws and the violators of them. But if any man should be found base enough, either from timidity, or connivance, to sacrifice important public functions, in order to stand favourably in the eyes of miscreants, against whom every good man should be arrayed, he may be assured, that whilst his disgraceful conduct increases the general misfortune, it will not enable him to escape the general danger. The crisis does

not admit of temporizing—every man must be on the side of the law, or against it; there can be no middle course. As to witnesses, the attempt to intimidate them, and by that means to avoid the visitation of justice, would be found vain and fallacious. The arm of government was stretched forth, to afford them protection; and under it they might repose in peace and security. The learned sergeant said, that the government of the country was determined upon taking the most efficacious measures to put down this ferocious and disgraceful insurrection. It would struggle to the last, to maintain the dominion of the laws, and to prevent the country being reduced to a state of anarchy and war. In such a contest it is easy to see where the victory will be. He was authorized to say, that the powers and resources of the state should be put in motion, to reclaim the country, and bring it back to tranquility and subordination. No man shall have it to say, that his efforts to restore the country to peace, have not been encouraged and supported—protection, and force, and pecuniary assistance (wherever there can be no danger of its contaminating the pure stream of justice) will be at hand. All that was then wanting, was, the cordial co-operation of the well disposed; without their assistance he would indeed despair; with it, he was confident of success—success in the most honourable of pursuits, the endeavour to preserve the country from the ravages of a savage insurrection, by the mere energy of the laws, which have been happily termed the very life and soul of every well regulated community. He was aware, that apprehensions had been entertained by many, of the inefficiency of the laws, to repress the present disturbances; but such an opinion could only have arisen from ignorance of the laws; or what is worse, neglect to put them into execution; for his own part, he had always been of opinion, and he saw no reason now to think otherwise, that the laws of the land alone, if duly enforced, were sufficient to crush any insurrection. The experience of some very recent, and some more remote events, had proved it, in an adjoining county, where the influence of terror had been more systematically established than in this; of thirty-eight persons indicted, thirty-three had been convicted. This is a pretty plain proof, that it is idle to think that intimidation will prevent witnesses from coming forward, where they are protected; or that jurors are to be corrupted, where every thing that they value is at stake. Of the above number, only six were to suffer capital punishment; but it may be useful to mention here, that one of those six (and who has already expiated his crimes on the scaffold) was convicted on the written information of a person, who had been murdered by the prisoner's mistaken friends, for having made that information; so that, although the witness was in his grave, yet his evidence remained, to convict the guilty person; this was a pretty strong instance of the

efficacy of the laws, in times of public disorder. Another of those unhappy men was adjudged to the punishment of death, whose crime consisted in affixing a notice on his neighbour's door, to quit his habitation, and give up his land, under the penalty of incurring the displeasure of the insurgents. Will not these examples of the vigour and severity of the laws teach the misguided people, who are destroying and disgracing the country, to abandon their evil ways, and resume the occupations of peace and industry?

The learned sergeant then expressed his regret, that all those who were now attending the court, had not heard the very able exposition of several of the clauses of the White-boy act, which had been given yesterday, by his lordship, the chief baron, in charging the grand jury; but as there were, no doubt, many who had not heard his lordship, it became the more necessary that he should explain the leading provisions of that code of laws, denominated the White-boy, and other acts, against tumultuous assemblies; a code of law peculiar to this country, and even here, though existing, not operative laws, unless when the public tranquillity is interrupted, by frequent and formidable risings of the people; and he repeated his opinion, that if those laws were properly understood, and duly executed, they would be found a most efficient system, for the prevention and punishment of offences against the public tranquillity. He then gave a clear and detailed explanation of the several laws in force, in times of public tumult; dividing and arranging their several powers, provisions and sanctions, under the heads of preventive, inquisitorial and punitive; demonstrating that the magistrates, and other peace-officers, if they would do their duty, had the most extensive powers given them, for preventing all tumultuous assemblies, and nipping in the bud every unlawful association of disorderly people. He said, that the very assuming any name, or denomination, or wearing any badge, not usually assumed and worn by his majesty's subjects, on their lawful occasions, in a riotous and tumultuous manner, or when the country is disturbed by tumultuous risings of the people, whether it be by day or night, and although no act be done, or outrage committed, is of itself a high misdemeanor, and punishable severely in the discretion of the Court. That further, to prevent unlawful and disorderly associations of the people, and outrages in furtherance of them, the magistrates have power to summon any person, suspected of being in possession of information of any unlawful meeting had, or to be had, or of any breach of the peace committed or intended to be committed, by the insurgents, and to examine such person, on oath, and bind him over in a recognizance to prosecute; and should he refuse to give information, to commit him to prison, until he shall comply. This inquisitorial power was not only well calculated to check the evil in its earliest and most immature stages,

but likewise to detect, and bring to light, the plan and system, and to frustrate or punish the atrocities of these misguided miscreants. The magistrates are also authorized to call upon every man in the country, to assist them in preserving the public peace under these laws, in times of tumult; the magistrate, besides his ordinary authority, is invested with the power of the sheriff, as to calling out the public force, and posse comitatus. He is, moreover, authorized and required to apprehend, disperse, and oppose all assemblies of insurgents in arms; and should death be the consequence of the discreet exercise of this power, all concerned stand indemnified from the consequences. As to the penalties and punishments which await those who do any act, in furtherance of the system of those unlawful assemblies, they are so numerous, and have been so often, and so well explained, that it would be waste of the public time, now to enumerate them. Who is it that can now be ignorant, that any attack upon the habitation of any person, or any entry into any dwelling house, procured by force or intimidation, that the robbery of arms, or other property, stealing of horses, sending threatening notices, attempting to regulate the price of land, or the rate of labour, tithes, or other dues; attempting to compel any person to quit his occupation, farm, or place of abode; who is it that can now be ignorant, that these and many other offences, if committed by tumultuous assembly, and when the country is disturbed, are punishable with death? Nay more, it cannot be too well impressed upon the minds of every person, that any man who shall harbour, conceal, or assist, or who shall supply arms, ammunition, or horses, to the persons concerned in these outrages, incurs by so doing, the penalty of death; so that by these laws, the offender is cast forth from human society, like the first murderer, with a mark set upon him, that no hand shall succour, nor any house afford him shelter. In addition to those severe laws against tumultuous risings, and unlawful confederacies, he would mention another highly salutary statute, which perhaps, was not so generally known, an act of the reign of George 2nd which made the very demand of arms, accompanied with force, (although, in fact, no arms should be given up or taken away) a transportable felony; and when the insatiable propensity of the lower orders of people, in this country, to obtain possession of arms, is considered, he thought it highly desirable, that it should be known, that there exists such a statute, making it so penal, even to attempt to get possession of arms, although no robbery or asportation of them, shall have been committed.—The learned sergeant then asked, emphatically, were not these laws strong enough, if enforced by the magistrate with zeal and impartiality, for the preservation or restoration of the country's peace and tranquillity? Do they not, in God's name, arm the magistracy with sufficient powers? Who can say they do not, but the man, who can conscientiously say he has tried

them, in all their vigour. And where is the man, that can say he has? Let the country then rouse from its criminal apathy. Let it put the laws in force, and avail itself of the sincere disposition of government, to give them every assistance, to protect the well-disposed; to punish the guilty; and to reform and reclaim the misguided people. The united powers, and energies of the laws, the magistrates, and the government, must speedily extinguish this alarming insurrection. To prove this, the learned sergeant quoted the precedent of other special commissions, which had, within these few years, been held in counties still more disturbed than this now is; and pointed out in strong and impressive language, the happy effects which had resulted from them. He had known all the province of Connaught (with the exception of two counties, and one of those not quite free from the infection) in a state of open insurrection; yet the firm administration of the law restored it to peace. The judges had then to travel, with a strong escort of dragoons, through a country, that might be said to be up in arms, and bodies of armed ruffians on the hills on either hand; but such was the value and effect of a decisive and vigorous execution of the laws, that the very succeeding assizes, the judges were enabled to travel through that country, without any escort; the same means have more recently restored other disturbed counties to a state of perfect tranquillity.—Under such circumstances, was it necessary for him again to repeat, that the laws duly administered, with the zealous co-operation of the magistrates, and well-disposed of all descriptions, would be competent to the tranquillizing of this county? For his own part, the learned sergeant said, he did not give up the cause of the country, or the vindication of the authority of the laws, alarming as appearances were; and he hoped the day was not distant when, he should have to congratulate the county of Waterford, on the return of the deluded peasantry to their former, and he might almost say, proverbial habits of industry and peace. But should his expectations, in that respect be unhappily disappointed; should the insurgent ruffians persevere to display the standard of tumult and terror; should the peaceable inhabitants continue to be disturbed in the enjoyment of their properties, and in the pursuit of their industry, and their personal safety threatened; should the robbery of arms, the destruction of property, and the desolation of the country, be any longer systematically pursued; the insurgents might rely upon it, that special commission, after special commission, would come down, month after month, until the country was reduced to a state of due obedience to the laws, and this daring insurrection effectually extinguished and put down.

WITNESSES FOR THE CROWN.

*Edward Flanagan* sworn.—Examined by the  
*Solicitor General.*

Where do you live?—At Ballyduff, in this county.

Did you take any land in this county?—I did; two farms.

Were you annoyed in any manner by the Caravats?—I was attacked by them.

Did you receive any injury?—I did: major Cole gave me permission to keep arms for my defence.

What happened to you?—The Caravats came to me on the 20th of November last, at about seven o'clock in the evening.

Was it light or dark?—Dark.

Were you at home?—I was sitting at the fire, beside my family.

Was there any other man in your house?—John Connor, a nephew of mine.

What did they do?—They drew the latch, and fired into the door.

Were they armed?—They were; some had pistols, and others a sword and an alpine stick.

On seeing them, what did you do?—I attempted to escape, but was prevented by two men with alpine sticks, standing outside the window.

After that what did you do?—I came back, and saw four men beating Connor severely.

Had he any thing in his hand?—He ran down to his room for a pistol and powder-horn, but at this time they had got the pistol from him.

With what were they beating him?—With alpine sticks.

What did you do on seeing him receive this usage?—I ran up a fire-place, and they pulled me down; I was a long time speaking to them, and said my life was in their hands.

Were there many candles lighted?—Yes; there were two or three in each room.

When they got you out of the house, what did they do?—They then beat me in several parts of the body.

Did any person attempt to save you?—My wife stuck to me all the time, and saved me from blows; I was stretched in the house, and my wife and my four children lying over me.

What were you beaten with?—Alpine sticks, and one man leaped on my body.

Did you see any paper in any of their hands?—Yes; they brought out some papers, and swore me to give up the two farms that I took; it was on a common piece of paper, and not on a book.

Do you recollect having been taken after that to a place where some of those men were supposed to be?—I do; on Tuesday this happened, and on Friday they brought me to Mr. John Dowse Langley, a magistrate.

Did you then see any persons who were there on that night?—I did.

Did you point them out?—I did; there were 12 or 13 of them together, and I pointed out some of them.

Turn, and see if you can discover any of those persons in court?—[Witness identified five of the prisoners, viz. Dowley, Mahoney, Brien, Butler, and Conolly.]

I now ask you, on your oath, are you positively certain that those five persons were present, when the outrage which you have stated was committed on you?—I am.

How long do you suppose they remained in your house?—They were there something better than an hour. I have never been the same man since.

*Edward Flahavan* cross-examined by  
Mr. *Mac Nally*.

Nothing arose out of the cross-examination to discredit the direct evidence given by the witness.

*John Connor* sworn.—Examined by  
Mr. *Sergeant Moore*.

Were you living with *Edward Flahavan* in last November?—I was; I am his nephew.

Do you recollect any thing happening to him on the 20th of November last?—I do; at about 7 or 8 o'clock, we were sitting at the fire-side, when we heard a noise.

Had you a light?—We had.

What was the first thing you heard?—Several persons coming to the door, and one of them rapped at the door; I supposed they were not of good intent; I jumped up off the chair, and went down to the room, and on my return back I saw the house thronged with fellows; I went down for a pistol, which I had for the protection of the house; I then saw about eight people in the house.

Had they any thing in their hands?—They had pistols, a sword, and alpine sticks.

What did you do?—As soon as I saw them, I cocked my pistol, and missed fire at them; and one of the party missed fire at me; that man's name was *Patrick Baker*. [Witness identified the prisoner *Baker*]. He was the man that snapped the pistol at me.

What passed then?—They then ran, and got me by the neck, and one of the party twisted the pistol out of my hand, and said, "flog the thief."

Point out the man who did that?—[Witness identified the prisoner *Conolly*].

Did you say any thing to them?—I asked them if they intended to take my life; and they swore bloodily that they did. They struck me several blows on the head and body; they jumped on me, and said if I would not surrender, they would put four balls through my head.

Show the man who did that?—[Identified *Patrick Blake*]. I was cruelly beaten, and *Flahavan* was unmercifully beaten; no one would believe he was the same man.

Did you get any more ill usage?—Yes; some of them cried, "hoist out *Flahavan*"; they then forced him out, and one of them pledged his honour that he would not be injured; they then pulled him out to the door, and began to flog him, and one of the party leaped two or three times on his body. Then I was planted on my knees; I bounced up, and caught one of them by the neck, and I

gave him a shove, and escaped out of the window; I went then to the corner of the house, and I heard *Flahavan* crying out to them to save his life.

Was there any light?—There were about 10 or 12 candles; when they first got into the house, they rummaged it for arms; the mistress of the house gave them the candles.

When did you next see any of those persons?—On the Friday following. [Witness identified the prisoners]. *Flahavan* and I went together to Mr. *John Dowse Langley*, and gave him information; we took a military party to the place where we found them; about ten of them were taken together, and they were identified the next morning.

Was there any search made in your presence?—I was present at a search, when there was a pistol found in *Dowley's* house; there was one alpine stick found in the same house.

Was there any mark on it?—Yes, it was stained with blood.

Did you tell Mr. *Langley* that the men were there?—I did; it was then rather late, and I marked them out in the guard-house on the next morning.

Are you positively certain those seven men whom you have identified, are a part of the men who committed the outrage in *Flahavan's* house?—I am positively certain.

*John Dowse Langley*, esq., a magistrate of the county of *Waterford*, was examined, and fully corroborated the evidence of the last witness, as to the fact of the manner of his identifying the prisoners, and also in the fact of arms and an alpine stick being found in the house of *Dowley*, one of the prisoners.

Here the case closed on the part of the crown.

#### PRISONERS' DEFENCE.

*Lawrence Connor* examined by Mr. *Mac Nally*.

Do you recollect having heard of *Flahavan's* house having been robbed?—I do.

What relative are you to the prosecutor?—He is my uncle; the last witness is my brother.

Had you any conversation with your brother about the business?—I had; I went to *Flahavan's* house, and asked my brother what call had he to those men, and whether it was he or *Flahavan* that knew them?—he (my brother) said, that neither he nor *Flahavan* knew any of them but one, but that the neighbours told them that were there. "If you are certain that those are the men," said *Flahavan*; "let us go and swear against them, and we shall get the favour of the gentry;" and that was all the conversation.

*John Connor*, the first witness, was called up again. He said that his brother was a simple man; he denied the conversation sworn to by the last witness; and said, that he told him, that if he (the witness) would prosecute those men, they would all be destroyed in the country.



*John Heffernan* sworn, and examined.

Where do you live?—At Terrereagh.

Do you know the prisoners?—I know Dodd and Baker; they and I, and the rest of the prisoners, were working together, digging potatoes, on the day of the night that Flahavan was robbed; we eat our supper together off the same table. After supper I went to bed; and those men went out to-bed, with the young girl of the house. Before I went to-bed, five of us were playing cards together, single handed.

*Ellen Walsh* examined by Mr. Cooke.

Witness said, that she knew the last witness; she knew the prisoners. They were employed, digging potatoes for her father, Patrick Walsh, on the day that Flahavan was robbed. Between ten and eleven on that night, the prisoners went to-bed together in the barn; the hasp of the door of the barn was fastened with a stick; she put the stick into the hasp when the prisoners went to-bed, and she was the person who opened the door for them in the morning.

Lord Norbury charged the jury. He recapitulated the whole of the evidence, and called the attention of the jury to the circumstances of the contradictory swearing of the two brothers, and the alibi proven by Ellen Walsh. If the jury believed her evidence, they ought to acquit the prisoners; but if, on the contrary, they believed the evidence on part of the crown, they ought to find them guilty.

Verdict—GUILTY.

On the motion of the Solicitor-general, the prisoners were, immediately after the jury had returned their verdict, brought up, and received sentence of death.

Monday, February 11th.

THOMAS DWYER was given in charge to the jury, and indicted for stealing arms.

Mr. Mac Nally, as counsel for the prisoner, moved that he might be permitted to withdraw his plea of not guilty, and to plead guilty. The Court, on account of the prisoner's extreme youth, granted the motion.

Mr. Solicitor General.—We call for judgment on this man.

The Clerk of the Crown, having again read the indictment to the prisoner, said, "what have you to say why sentence of death, and execution thereupon, should not be awarded you according to law? If you have any thing to say, the Court will hear you; if not, hear the judgment of the Court."

Mr. Mac Nally.—My lord, the prisoner has not any thing to urge in point of law. He throws himself upon the Court, and hopes, from his penitence and youth, that he may be recommended to mercy.

Mr. Solicitor General.—It is explicitly and distinctly understood that no kind of compact whatever has been entered into.

Lord Chief Baron.—I feel, in common with every individual in the court, most deeply shocked at the scene that has just now passed before our eyes; and yet I am not very sure that great good may not flow from it; for what must the general opinion now be among the infatuated wretches who are disturbing the peace of the country, when it shall be known that a youth of your tender age was brought out at midnight, to rob the houses of inhabitants of their arms; you were not driven by want; you were not driven by necessity, to commit that outrage; you were living in a plentiful country, under a mild government, where the laws are just, impartial, and leniently administered; it was not to satisfy your wants, but your guilty desires, by robbing and plundering this house, not of the valuable articles it contained, but of arms and ammunition, in order that you might be enabled to commit crimes. Your guilt has been so flagrant; the case against you so manifest; the testimony of the witness so irrefragable, that those by whom you were advised, and properly advised, have thought it better that you should plead guilty, and throw yourself on the mercy of the crown, than to hear the same verdict pronounced against you by the jury; and therefore it was, that they thought it better for you to take your chance of having mercy extended to you, than submit the case to the consideration of the jury.

I wish, Thomas Dwyer, that all the young people of the country, who have been deluded by the banditti which infest it, would take warning by your unhappy fate, and feel how impossible and fruitless it is for them to persevere in their depredations and outrages with success—that they would feel, that the peace of the country cannot be disturbed by banditti with impunity. Can it be endured, that those persons who are labouring by day, should be legislating by night?—that those who are tilling the ground by day, should be enacting laws by night to govern the country?—that that they should presume, with impunity, to say, that the man who has, by honest industry, raised a property for himself and family, should not be allowed to enjoy it, but that it must be regulated by men whose only authority is their guilt? Do you imagine, that the laws will sleep, and permit those midnight banditti to enact those flagitious laws, the system of which is, to disarm the gentlemen of the country?

I call upon you to have a due consideration on what you may and can do, to recommend yourself as an object of compassion, to make the discoveries which are in your power to make. You could not have been one of the party without having been in their secrets. I call on you, and the banditti by which this country is disturbed, and with whom you are connected, to recollect that your fate may de-

pend on your conduct and their conduct; for, after the outrages that have been committed, and have disgraced the country, the people that look for mercy must be a peaceable and industrious unoffending people; and, therefore, young as you are, it is out of the power of this court to afford you any expectation of mercy, unless immediate and general tranquillity be restored to the country, for mercy to an individual under any other circumstances, would be cruelty to the country; and therefore, if mercy is extended to you, it must be because you deserve it.

His lordship then pronounced sentence of death.

JOHN BROWN and MAURICE QUAN were indicted for the offence of burglary and robbery, in the dwelling-house of Patrick Power, esq., at Turhallow, on the 19th of January, 1810.

*Pierce Kavanagh* sworn.—Examined by the *Solicitor General*.

Whose servant are you?—Mr. Patrick Power's.

Do you recollect any thing happening in his house, in January last?—Yes, at about six or seven o'clock in the afternoon; it was not day-light; Mr. Power was in Waterford.

What happened?—About half past seven o'clock, four or five men came into the house, through the brewhouse window; when the first man came in, he presented a gun, and he asked for our young lady. I said she was in Cahir. He said I lied; I said I would take my oath. Then one of the party desired me to follow him with a candle. I found my master's desk was broke open when I went in. He then desired me to go up stairs, and bring him a candle, which I did; one of them took my master's gun, and he fired a shot out of the window. When I came down stairs, he asked a glass; he opened the cellar door, and took away some bottles of spirits, and he laid the candle at the door, and then he went away; he took with him my master's gun; they were about two hours and a half in the house.

Turn round, and see if you observe any persons in Court that were in your master's house that night.—[Witness identified the prisoners.]

What are their names?—Brown and Quan. I gave information on the Tuesday following.

How did you know those men?—I knew them from the time I came to the service: they were all armed, except young Brown.

I ask you again, have you any doubt of the prisoners?—Not the least.

The Rev. *Nicholas Herbert* sworn.—Examined by Mr. Sergeant *Moore*.

Witness said he was a magistrate, and that he took the information of the last witness, that the country was in a disturbed state. When he came to give information, he said,  
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Mr. Herbert, I throw myself into your hands. He appeared a little afraid; his informations corresponded with the first account he gave of the transaction; witness took the informations on that night, but he took them again next morning.

*Patrick Power*, esq. sworn.—Examined by Mr. *Prendergast*.

Do you know the prisoners?—I know them both perfectly well.

Did you lose any property?—Yes, I was robbed.

How long have you known the prisoner, Quan?—He has been living on my grounds three years last March.

Had you any quarrel respecting the land he held from you?—On the day before the robbery there were potatoes on the ground for sale; but the people of the country were afraid to buy; I had served the prisoner Quan with notice to quit the land in September last; he refused to give up the land.

*Pierce Kavanagh* called again.

Did any of the prisoners say any thing about potatoes on the night of the robbery?—Some of them on that night said, "he sold the potatoes; he has sold the potatoes."

*James Neal* examined.

Were you in Mr. Power's house on the night of the robbery?—I was; it happened between six and seven o'clock; I was standing near the kitchen fire; the kitchen door was not fastened.

How did the men get in?—By the windows. The first man demanded arms; they struck Kavanagh and me.

What did they do?—I can't tell, because I never stirred out of the kitchen. I saw but one man; I saw no more of it; I heard a shot.—[Witness could not identify the prisoners.]

#### PRISONERS' DEFENCE.

Several witnesses were examined on part of each of the prisoners to prove an alibi.

Lord *Norbury* charged the jury, and made several observations on such parts of the evidence as were material for their consideration.—Verdict, GUILTY.

The jury recommended the prisoner Brown to the mercy of the Court; and Quan received sentence of death.

THOMAS WELAN and JOHN WELAN were indicted for burglary and robbery.

By advice of their counsel, Mr. 'Mac Nally, who had a conference on the subject with the solicitor-general, the prisoners withdrew their plea of not guilty, and pleaded guilty.

The trials having been now ended, the Solicitor-general addressed the Court as follows:—  
My Lord, your lordship will permit me, as  
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conducting, with the assistance of my learned friends, the prosecutions at this special commission, to address a few words to your lordships and the public. I shall unquestionably have great satisfaction in forwarding—what I am sure is the wish of the Court, and of every humane and feeling man that hears me—a recommendation to his majesty's representative, to spare the lives of the four convicts on whom sentence of death has been passed, particularly the unfortunate youth, Thomas Dwyer.

I wish it should be publicly known, that in doing so, I am very much influenced by a conviction, that his crime, in a moral point of view, is to be imputed to the influence of others. I am very much influenced by the decent, penitent, and contrite feeling, which seems to have inspired him in pleading guilty to the indictment; but I wish it to be known explicitly, that I am more influenced by the humane interference of the prosecutor's family, which now surround me. I do not believe that there ever has been a more grievous instance of persecution, than the prosecutor and his family have suffered from that atrocious banditti, by which the country, and particularly that part of it, has been infested. Mr. Andrews, his wife, and son, all attend the Court, this day, as prosecutors, all of whom would have given most conclusive evidence as to the guilt of the prisoner.

Mr. Andrews is an Englishman, who, in despite of the outrages committed about him, and against him, has remained firm and undaunted, in the middle of the most mountainous part of the country; endeavouring to sustain the laws, and to introduce the civilization of his own country into this unfortunate land.

This has not been the first nor second time he was marked for persecution. Notwithstanding all, with tears in his eyes, he has supplicated for mercy on behalf of the boy; I wish it to be known, that as it is owing to his vigilance and to his courage that the prisoner has been brought to justice; so it is owing to his humanity, that a reasonable hope can be entertained of his life being saved; and, therefore, I do trust, that those ruffians by whom he has been assailed, will, instead of persevering in their associations against him, hail him as their benefactor, and remember that it is as much the effect of those laws by which the country is governed, to hold forth mercy, as to bring the guilty to justice. All those circumstances will recommend Dwyer so far as to save his life. It will be for the consideration of his majesty's representative to say, whether it will be safe to suffer so profligate a youth to remain in this country.

But I wish it to be distinctly known in the country, that my interference and that of my colleagues (I do not know whether my language is intelligible, or if I am understood by the common people, but if I am not understood by them, I hope some of the gentlemen of the country that understand the two languages, will

explain it to the people) that the recommendation for mercy, to be extended towards the prisoner shall be on this condition—that if that part of the country shall remain tranquil; if Mr. Andrews, his wife, and family shall remain unmolested, and an end put to the plundering of arms; and if the arms lately taken by the banditti shall be restored, and the face of the country tranquil, his life shall be safe. His life hangs upon that thread; for, on the first appearance of any outrage in that neighbourhood, in forty-eight hours after it is known, it shall be my recommendation to send that boy out to instant execution. Let it, therefore, be known and circulated through the people, that if that boy shall lose his life, under the sentence of death he has received, his confederates will be his murderers. Let it be known that this boy's life is safe, if his country deserves it; and that if, by their conduct, they do not deserve it, the miserable victim shall be led forth to instant death.

With respect to the other convicts, the solicitor-general said, he should recommend to his excellency the lord lieutenant, to retain them also as hostages for the future good conduct and peaceable demeanor of the inhabitants who lived in the neighbourhood where those prisoners resided; and he said, that he wished their relations and the public to understand, that on the first appearance of disturbance in the country these unfortunate men should be instantly led forth to execution.

KILKENNY, February 13th, 1811.

#### GRAND JURY.

Hon. James Butler,  
Lord Viscount Kerrin,  
Sir John Blunden, bart.  
John Flood,  
Michael Cox,  
George Bryan,  
Thomas Kavanagh,  
William Bayley,  
John Power,  
Ralph Gore,  
Patrick Dean,  
George Rath,

William Morris,  
Robert St. George,  
Robert Flood,  
William Waring,  
Edward Murphy,  
Richard Power,  
Samuel Madden,  
Peter Walsh,  
Edward Waring,  
Richard Ball, and  
James Penefay Poe,  
Esqrs.

The Grand Jury having been sworn;

Lord Norbury then addressed them as follows:—Gentlemen, in the progress of our serious and important duties, it has been thought expedient on the part of government, to show a becoming solicitude for the tranquillity of your respectable county. You are all conscious that you have by no means escaped that contagious malady of disturbance, which has visited you as a plague, that had its origin in the adjacent counties, from whose contiguity you have derived a dangerous portion of infection; which has in many instances disturbed your repose, and has at length broken out in outrages, most alarming in their tendency, and destructive of your peace.

You will have every assistance in checking the public spreading of this alarming disorder through the heretofore undisturbed and happy portions of your county, where every blessing of life, under a free government, has been had in that fulness of enjoyment, to which every country in the universe, that is not within the protection of the British constitution, has been of latter times unfortunately a stranger. In addressing you at present, although I feel it my duty to apprise you of the dangers which surround you, and which you ought to avert, I do not wish to magnify them to an excess that might give confidence to our enemies, or despondency to our friends: or that might in any degree affect the cool and even tenor of your investigations in the cases which may come before you as grand jurors.

Although a most dangerous spirit of licentious outrage has gone forth, I am free to declare, that I have not been able to trace, in the great variety of cases that have occurred in our progress, any immediate concert with foreign intervention, nor any systematic conspiracy for the overthrow of our government, with which the actors in these outrages have any direct privity, or confederated plan. But any man of common sense must be aware to what desperate and dangerous purposes associated banditti of the lowest order may be converted, if familiarized to the uncontrolled habit of the plunder of arms with impunity, under the semblance of redressing local grievances, and of satisfying their vengeance against rival factions.

By the unfortunate want of confidence of co-operation amongst the magistrates of Tipperary, (many of whom are my nearest friends) this spirit of avowed outrage has raised its crest so high, that gentlemen of old authority and respect have lately been driven from their public affairs, in terror and dismay, with a volley of shots fired at them in the noon day, when attempting to keep the peace. Some of those gentlemen have quitted their family residence, and the county had become the theatre for bloody conflicts of Caravats and Shanavests; and out of those barbarous factions, a monster has been generated, whose hideous heads, after hissing at and lacerating each other, have at length, with combined horror and enormity, carried terror and devastation through the land, like the wild beast that has been poetically described, with the heads of an Hydra, the hands of a Briareus, and the mutability of a Proteus. The helpless and unprotected have either fled, or been sacrificed. A virtuous, brave, but solitary gentleman, was too feeble for the conflict, and the union of miscreants triumphed over the disunion of magistrates. This is a misfortune that cannot attach upon your county, and, although some alarming outrages have taken place within your precincts, you have the happiness to have not only an active and spirited magistracy, that has already distinguished itself in repressing tumults; but you have a numerous resident gentry, pre-eminent for their

zeal to promote civilization by their exertions, and to preserve the good order and comforts of all classes of their fellow-subjects; with dispositions and habits of kind and friendly confidence, which are unbroken and uncontaminated by petty factions or paltry distinctions of party. From that body of gentry have been selected those whom I have the honour to address upon this interesting occasion; which has been attended by such a proud proportion of your aristocracy and gentry, as would not lose by comparison with any part of the empire. When the minds of such men are in unison with each other, this country has nothing to apprehend; and in calling your attention to the laws which are immediately applicable to the case, which this occasion will bring before you, you will find them adequate to the duty in which you are engaged. They have already been proved competent to meet the crimes which have been the subject of painful investigation, or clear convictions and severe punishments, in the counties that we have passed. The statute of the 15th and 16th of the king against tumultuous risings has been made familiar to gentlemen of your attention and experience, and has undergone the minute consideration and legal discussion of the judges upon former occasions, as well as on the present commission, which has been attended by the most respectable and confidential law officers of the crown, at the head of whom is one whose birth you may well boast of, and whose conspicuous talents are an ornament, not only to the profession he belongs to, but to the age and empire in which he lives: such is the assistance you will have in the cases that will probably come before you. The comprehensive provisions of the statute I alluded to, are likely to meet every case that is the object of the commission, or that calls for special attention, which will be directed in its inquiries to restore this county to its tranquillity, which has been disturbed by the wicked instigations of others.

Since the period when the seeds of sedition and anarchy have been sown, and scattered so widely by the French revolution, it is a matter of notoriety that, in imitation of the first movers of that revolution, seminaries have been established in these countries to corrupt, delude, and intoxicate the mind of the lower orders, with opinions calculated to overthrow the constituted authorities of the existing government. The imitative faculties of our speculators in politics have not been at a loss from time to time to agitate the public mind here with some popular pretext, or imaginary grievance. The well known practice is, to keep in perpetual ferment the minds of the people of Ireland, who, though unacquainted with the motives of the agitators, are, from the ardent spirit of our countrymen, ready to be the instruments of others, and are by nature *manu quam concilio promptiores*. In further imitation of the authors of that revolution, institutions are erected to teach and promulgate the rudiments of the science, and they have been esta-

blished under the various appellations of clubs, cabals, committees, or caravats, as accident or choice may dictate, for the promotion and advancement of the general system. Some of those associations have a primary station to give light, and rule, and motion to those which are placed in a subordinate sphere, without being conscious of their measure of contributory assistance to the great principle of overthrow to ancient establishments, against which the pen and tongue of every revolutionary ruffian is put in requisition. An experiment was made on Great Britain—she shook the assailants like dew drops from her lion's mane. In Ireland the experiment was more successful, and for a time we were shaken to our centre; but in the hour of danger you triumphed; and if attempts are making now to form a new confederacy of mischief, you must meet it boldly; you are neither cowards nor traitors; you know how to deal with both; the ancient Germans drowned the one, and hanged the other, but no man could doubt but both ought to be annihilated. You are not mean enough to equivocate or compromise with crime. It is my duty to exhort you to the sober exercise of your temperate functions, with a rigid attention to the benignant principles of the law, having good and sufficient proof to be regulated by. I cannot avoid impressing on your minds the great responsibility of your situations. I have already apprised you that you have strong laws to act upon, although others yet stronger have lately expired. Every good man wishes that a necessity did not exist for their revival. The originating and enactment of severe laws can at all times be justified by that necessity which calls for strong measures to uphold this our best of constitutions, against attacks that could not otherwise be combated. To those who attempt to overthrow this, the only existing palladium of civil and religious liberty, are to be attributed the obloquy and the libellous censure on the severe remedies which licentious outrages have made necessary. Not long since, it happened, as the consequence of our late unfortunate rebellion, that during the administration of lord Cornwallis in Ireland, the government and legislature were forced to adopt the dreadful alternative of martial law, and, by a legislative act, to suspend the sacred functions of grand and petit juries, in cases that grew out of that rebellion. During that period, the lives and liberties of the people had not, in such cases as I allude to, the protection of such men as you, placed, as you are, in the proudest bulwark of the constitution, and as a barrier between the power of the crown and the privileges of the people. When the chief governor I mentioned was gone to his grave, you know that much unfounded obloquy was cast upon him, even for the most scrupulous exercise of his awful responsibility under that law.

The evil that men do lives after them—

The good is oft' interred with their bones.

But the friends of lord Cornwallis know that all the good he rendered to his country has not died with him; and that brave and humane man, above all things, ought not to have imputed to him that he

Shut the gates of mercy on mankind.

I have been inadvertently led into the paying a tribute to his memory without hazarding the imputation to which panegyric is often liable. From such an imputation I cannot better rescue myself, than in the words of a great man of your own country, who said, that "praises are not apt to vegetate upon the tomb, or if they do, they shoot downwards, and yield but little fruit to those who plant them." But, I trust, we never shall live to see the fatal necessity of such a court-martial law in Ireland again. Our earnest endeavour should be, by the wholesome and firm administration of justice, to avert that necessity: for that purpose, every honest man should consider, that he has a post assigned to him, upon which he should act as a vigilant and faithful sentinel. If we do not abandon our post, but act like a firm phalanx, we shall be proof against all insidious attacks of our adversaries; but let every individual feel, that if he is unfaithful, or even supine and indifferent to his trust, that he may let in, through the breach occasioned by his desertion, that torrent of mischief which is ready to burst upon him from that pandemonium of uproar, robbery, and murder, which has overwhelmed the greatest portion of Europe.

Gentlemen, the inhabitants of the fair portions of the world, which have fallen victims to their own follies and infatuations, and that now lie prostrate in the dust, were the dupes of plausible reformers, who having first defamed the constituted authorities, have led them finally to destruction. But their liberties have no such asylum as a grand jury. In that sanctuary our liberty is secure; and I trust, that having been raised by the virtues and cemented by the blood of your revered ancestors, the venerable fabric will endure till time shall be no more.

#### PETIT JURY.

Henry Baker,	Joseph Robins,
Richard Millet,	Richard Levin,
William Merry,	Edward Cullen,
Edward Laurensan,	—— Blackmoore,
Charles Burn,	Robert Robbins,
Matthew Mills,	Henry G——.

JOHN QUINLAN was indicted for burglary, and robbery, in the dwelling-house of James Keneally, on the first of July, 1810.

There were several other indictments under the White-boy act.

The *Solicitor General* addressed the Court as follows:—My lords, and gentlemen of the jury; The prisoner at the bar is charged by this indictment with one of those crimes which

have been so frequently committed, for some time past, in the counties of Tipperary and Waterford, and which having been lately introduced amongst you, it has been deemed necessary to speed this special commission into your, heretofore, peaceable county. I shall not, by statement, anticipate the facts of this particular case, or endeavour to pre-occupy your minds against the unfortunate person now at the bar: you will decide upon his fate calmly and dispassionately, according to the evidence which you shall hear; and you will not suffer any observations which I shall make upon the situation of the country, to influence your judgment in pronouncing your verdict. On the contrary, it is my anxious wish, that whatever alarm you may feel for the general tranquillity, may render you the more cautious and scrupulous in examining the case of the unhappy man now upon trial, persuaded as I am, that the interests of public justice can only be advanced by such judicial decisions as are temperate and well considered, free from doubt, and above suspicion.

I sincerely lament, that the disturbances which made it necessary to speed this special commission, should have found their way into the county of Kilkenny; but, it is a great consolation to me to reflect, that the mischief has not originated amongst you; that the infection has been recently received from that adjacent county to which the prisoner at the bar belongs; and, that there is every reason to hope that its progress is likely to be checked effectually by this prompt and extraordinary visitation of public justice. The zeal and activity of your magistracy, in apprehending the individuals charged with the offences which have been committed, has enabled his majesty's government to apply this instant remedy, before the contagion shall have been further spread, and without waiting for the recurrence of the ordinary period of the assizes. It is also a great consolation to those who are engaged in the arduous and responsible labours of public justice, to meet a cordial and general co-operation from the gentlemen of those counties which they are obliged to visit; and permit me to add, that I feel a peculiar and individual gratification in being able to boast of such in the county of Kilkenny. I see collected around me, every man illustrious by birth and rank, every man distinguished for talent, property and character, all assembled at the great call of public duty. I know that neither distance, nor the avocations of business or pleasure, have been sufficient to detain those who were absent, when the necessity of meeting upon this important occasion was announced to them. I am not surprised, that the unusual respectability of the audience which I address, should have called forth the approbation of the noble and learned judge, in his charge to the grand jury; and I cannot but hope, that the same influence of a high resident gentry, which has hitherto protected this county from disturbance, will be found

effectual in restoring that tranquillity so recently and unexpectedly invaded.

But, gentlemen, the very circumstance of this mischief having been recently introduced amongst you, makes it necessary that I should call the public attention the more minutely to the nature of those outrages, to which you have for so many years been strangers, and to the provisions of that extraordinary code of laws which it has not for so long a time been necessary to enforce in this county. It is the object of this commission to carry into execution the enactments of the 15th and 16th of the king, c. 21. "To prevent and punish tumultuous risings of persons within this kingdom." It is commonly called the White-boy act, having been passed during the insurrection distinguished by that name; but, although it has continued upon the Statute Book since the year 1776, it has formed no part of the general law of the land, and is totally inapplicable and unknown to those parts of the island not agitated by public disturbances. Very shortly after it was enacted, it received this construction from the judges of the land, that no indictment can be maintained upon it, unless it be proved upon the trial, that the county in which the offence was committed was, at the time of committing it, disturbed, in consequence of unlawful associations. In counties not so disturbed, some of the acts which this statute denounces as criminal, are not punishable at all, and others are not punishable by the dreadful sanctions which it prescribes: it is, therefore, at this moment, not the law of the adjoining counties of Carlow and Queen's county, because they are tranquil, and it is the law of the counties of Waterford and Tipperary, because they are disturbed. Though a perpetual statute, it can only be occasionally enforced. It sleeps upon the book, till awakened into life by the crimes of the people, and rests like a sword in its scabbard, until drawn into activity by public disturbances. What the nature of this dreadful weapon is, now unsheathed by the disturbances of your county, it is most important that you should know; for a new system of rules for conduct becomes applicable to your people, and a new system of duties has devolved upon your magistracy. I earnestly entreat your attention to both. In civilized communities, the criminal law is pointed against the frailties of human nature, and against those transgressions which, in consequence of our infirmities, individuals are tempted to commit; the punishments of such offences are accordingly proportioned to the offences themselves; and as long as the principles of social establishment are maintained, the law does not contemplate the possibility of individuals associating in confederacy against the general good. Unfortunately, however, in Ireland the disposition of the people to unlawful and tumultuous assemblies, has introduced another principle of legislation, and the statute to which I allude has been pointed against the mischief of illegal associations, and

its sanctions are calculated rather with a view to the public danger, which it is necessary to provide against, than the particular crimes which it proposes to punish. The preamble of this act appears, indeed, with a change of names, nothing more than a history of the outrages now so familiar to us. It recites—

“That several persons, calling themselves White-boys, and others, as well by night as in the day time, have, in a riotous, disorderly, and tumultuous manner, assembled together, and have abused and injured the persons, habitations, and properties of many of his majesty's loyal and faithful subjects, and have taken and carried away their horses and arms, and have compelled them to surrender up, quit, and leave their habitations, farms, and places of abode, and have, with threats and violence, imposed sundry oaths and solemn declarations, and solicited several of his majesty's subjects, by threats and promises, to join with them in such their mischievous and iniquitous proceedings; and have also sent threatening and incendiary letters to several persons, to the great terror of his majesty's peaceable subjects, and have taken upon themselves to obstruct the exportation of corn, grain, meal, malt, and flour, and to destroy and damage the same, when intended for exportation, and have also destroyed mills, granaries, and store-houses, provided for the keeping of corn.”

Such are the associations which, under various names and pretences, have, from time to time, distracted several parts of this island: they have all had one common object, the dominion of the mob over the property of the country. Sometimes, the rent of the land is the object of their legislation—at other times, the tithes of the Protestant clergy—again, the dues of the Roman Catholic pastors are regulated by their decrees—the wages of labour and the price of provisions are, at another time, to be subjected to their rule—property must not rise in value, nor circulate in possession—the landlord must keep his old tenant at the old rent—all transfers are forbidden—trade is denounced—there is a maximum established for rent, and a minimum for wages—the first law of civil society, that the value of things must find its own level, is repealed by those reformers, and their own arbitrary and capricious ordinances are established in its place—whatever is sacred, venerable, and established, they scruple not to demolish—whatever institution the wisest of law-givers or politicians would fear to touch, or would touch with a trembling hand, is undertaken by the illiterate rabble and peasantry, without scruple or reserve. They enforce the obedience of those laws by the infliction of torture, the burning of houses, the commission of murder—they are not satisfied, unless they compel others to join in their associations; and, by terror and menaces, they force into their ranks hundreds, originally innocent of their intentions—they bind those to the confederacy by the compul-

sory administration of unlawful oaths, and, by this shocking profanation of the most solemn of obligations, their numbers are recruited, and, at the same time, the people of the country become universally depraved. When thus associated, they do not confine themselves to those public objects which they originally professed, but become an organized banditti, ready for the commission of every offence which degrades our nature and infects society. If the guilty passions of an individual are to be gratified; if he has vengeance to satiate by murder; if he meditates the violation or abduction of a female; he finds in these confederated ruffians ready instruments, sometimes mercenaries, sometimes volunteers, to assist him in the perpetration of his crime. Of this we have had many instances in the progress of this commission, and others of the same description. Such are the associations which it is the object of this law to punish; such is the dreadful state of things, intolerable in any civilized society, which it is our duty to prevent from being established in this once happy country.

This law meets the principle of unlawful assemblies in the first instance, and provides, that the mere act of association, without any concomitant transgression, is a high crime and misdemeanor, subject to severe punishment.

“If any person or persons, being armed with any fire-arms, firelock, pistol, or any offensive weapon or weapons whatsoever, or having his, her, or their face or faces, body or bodies, disguised in any manner whatsoever, or wearing any particular badge, dress, or uniform, not usually worn by him or them, upon his, her, or their lawful occasions, or assuming any particular name or denomination, not usually assumed by his majesty's subjects upon their lawful occasions—shall rise, assemble, or appear, by day or by night, to the terror of his majesty's subjects; every person so offending, being thereof lawfully convicted upon indictment, shall be adjudged guilty of a high misdemeanor; and the Court before whom such person or persons shall be tried, shall have power and authority to punish such offender or offenders, by fine and imprisonment, and to award pillory, whipping, or other corporal punishment, with security for the future good behaviour of the person or persons so convicted, as in the discretion of the Court shall seem meet.”

By this very severe provision, the mere act of unlawfully assembling, though no other act should be committed—though not a hand should be raised by any of the party, subjects the transgressor to the ruin of a fine—the disgrace of the pillory—the miseries of imprisonment, and the torture of the lash; and it has been found necessary, upon this commission, in the county of Tipperary, to put this part of the law in force against 28 unfortunate persons, who, for the mere offence of assembling as Caravats, have been confined, in most instances, for the space of 12 months, to miserable dungeons, only to be removed from them at the

stated periods, at which they are to be exhibited, naked and disgraceful spectacles, and scourged through the county whose tranquillity they had menaced. I cannot believe, that if the inhabitants of this county were apprized of those dreadful penalties, they could be sufficiently insatuated to run the risk of incurring them; and yet harsh and cruel as this part of the law may appear, it is merciful when compared with what follows.—From this section onward, every line seems written in characters of blood: it is the policy of this law, that almost every act which an unlawful assembly, once associated, can commit, shall be a capital felony; and you will find that several, which, in a tranquil and civilized society, would be merely trespasses, and some that would not be even so much, are subjected to the extreme punishment of an ignominious death.

“If any person or persons, rising or assembled in manner herein before mentioned, or in any other manner whatsoever, shall either by day or by night, wilfully or maliciously shoot at, maim, or disfigure any person or persons in any dwelling-house or other place; or shall knowingly send any letter, with or without any fictitious name or names thereto subscribed, demanding any money, fire-arms, ammunition, or other thing or things, or threatening to injure the person or property of any of his majesty's subjects; or if any person or persons shall, by gift, promise, or threats, procure any of his majesty's subjects to join in any of the aforesaid offences, or by force, threats, or menaces, attempt to compel any of his majesty's subjects to quit his, her, or their habitation, farm, possession, place of abode, or lawful employment, all and every person or persons so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and suffer death without benefit of clergy.

The section which immediately follows, establishes a distinction between offences committed in the day time and those aggravated by being committed in the night.—“If any person or persons shall, at any time after sunset, and before sunrise, or before the hour of eleven in the forenoon, though the sun should be risen, maliciously assault, or in any manner whatsoever maliciously injure the habitation, property, goods, or chattels of any other person or persons, or shall forcibly or maliciously break into his, her, or their house, barn, or out-house, or shall maliciously cause any door to be opened by threats or menaces, or shall forcibly take or carry away any horse, gelding, mare, male, or any gun, sword, or other offensive weapon, or any money, or goods, or chattels, without the consent of the owner, or shall cause the same, or any of the same, to be delivered to them by threats and menaces, all and every person or persons so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death, as in cases of felony, without benefit of clergy.”

By the section which next follows, that last recited class of offences, if committed in the

day-time, are declared to be high misdemeanors, punishable by fine, pillory, imprisonment, and whipping. So severe is this last provision, that the mere assault at night of a man's dwelling, which seems personified as it were for the purpose of making it liable to this new species of inquiry, becomes a capital felony.

The statute then proceeds with enactments against all those who assist or abet unlawful associations, and declares, “That all and every person or persons who shall assist, abet, or succour, any person or persons to commit any of the offences aforesaid, or shall wilfully or knowingly conceal any person or persons, who have committed any of the offences aforesaid (for which sentence of death, as in cases of felony, may be awarded) every person or persons so aiding, assisting, abetting, succouring, or concealing such person or persons, shall, on being lawfully convicted thereof, be adjudged guilty of felony, and suffer death, as in cases of felony, without benefit of clergy.”

Let it therefore be understood by all classes, that whenever the county is disturbed by unlawful associations, not merely the delinquents themselves, but all connected in privity of guilt with them, nay, all who, from mistaken humanity, harbour, protect, or conceal them, are felons, subject to the pains of death; and let it be remembered, that the laws of this land are equal; that this severe and penal provision is not directed against the peasantry alone, but is pointed against every man, be his rank ever so high; and that no man shall be permitted with impunity to harbour or conceal a felon, because he may be his favourite, his follower, or his tenant, or because a vulgar popularity may be acquired by such conduct. If he does so, he identifies himself in fate with that felon, and as a felon must be treated; and the public may be assured, that if such a case as I have alluded to can be made out at any time, we, who conduct these prosecutions, will have a pleasure in dragging to disgrace and punishment the superior delinquent, who aggravates his crime by his rank; a pleasure which we can never feel in bringing the de-luded peasants of the country to the bar of a court of justice. These enactments of the 15th and 16th of the king, have been enlarged by the 27th, c. 24, which, amongst other things, declares, that even to provide instruments for inflicting bodily pain, in order to induce any person to enter into or assist in any unlawful combination, or deter any person from giving evidence, or to prevent the collection of any lawful rates or taxes, shall be a capital felony; and that if any person “shall make use of any manner of force, or inflict, or threaten to inflict, any manner of bodily pain or punishment whatever, or destroy, or threaten to destroy, the property of any person, for any of the above purposes, he shall suffer death as a felon, without benefit of clergy.” By the same statute, “If any person shall print, write, publish, or knowingly circulate or deliver, or shall



cause or procure to be printed, written, posted, published, circulated, or delivered, any notice, letter, or message, exciting, or tending to excite, any riot, tumultuous meeting, or unlawful confederacy, he being duly convicted thereof, shall suffer death, without benefit of clergy."

Upon a conviction under this section, in the county of Tipperary, an unfortunate man now lies in the gaol of Clonmel, under sentence of death, whose crime was the delivery of notice from the insurgents to a man against whom they put in force their system of terror.

Such are the principal enactments of this code against unlawful assemblies. It is a code unknown in the more civilized sister country; it is not suited to any people amongst whom social institutions are respected; it is, as I have said before, unknown even amongst ourselves, except in those districts where society is disorganized by the force of popular tumult. It is just to call such a system severe, but it is merciful towards the public—it is founded upon that soundest of principles, the prevention of crime, and upon the known tendency of unlawful associations to produce it; in the case of individuals, the progress from one offence to another is easy; but in the case of associated criminals, it is rapid. The very nature of unlawful associations is, to inflame the passions of one man by the passions of another, and to bring into general action the collected vices of many. The man whose own temptations or frailty would be ineffectual to urge him onward in the career of guilt, whose own reason or compunction might arrest his progress, is borne along with the torrent; bad example decides him; false shame hardens him; and he is precipitated, scarcely voluntarily, and almost necessarily, into the commission of every crime. It is therefore a humane, as well as a wise system of laws, which denounces the highest punishment against every offence, of whatever character, which, from its nature, is likely to lead to the higher and more aggravated enormities. The excellence of this code is exemplified by the progress of those associations against which it is directed. Mischievous incendiaries first spread the spirit of discontent amongst the lower orders. The humility of their condition is stated as a grievance; every inconvenience of which they can complain is represented as an abuse. Their ignorance is played upon; their passions are fired. They confederate for the purpose of changing their condition; and money and arms being necessary in order to make them strong, they become habituated to rapine. Plunder and violence being thus familiar to them, every loyal and honest man becomes their enemy; fear renders them cruel and vindictive, and torture and assassination are the base and ready instruments of confederated and guilty ruffians. Thus, every moral principle is rapidly extinguished, every sense of obligation is lost; that consummation of vice to which an individual gradually arrives,

a conspirator reaches speedily, sometimes instantaneously; and the unfortunate and deluded wretch, who, perhaps, in the morning associates with others, as he is taught to believe, for the redress of grievances and the reformation of abuses, before the evening sun has set upon him, is involved in the complicated guilt of robbery and murder, covered with crimes and stained with blood.

I have said, that by these laws a new class of duties devolves upon the magistrates. In peaceable times, if a justice of the peace waits until he receives information, and then takes it; if he writes his mittimus, and returns his recognizances and informations to the Crown-office, and attends the sessions and the assizes, he discharges all the duties which the exigence of an undisturbed country requires. But when the mischief of an unlawful confederacy is abroad, he is called upon for other exertions, and invested with higher powers. He must not wait for information; he must seek it; when found, pursue it; act upon it; and when he meets the assembled delinquents, he must oppose them and put them down. These are arduous duties, requiring exertion, and inducing fatigue, risk, and responsibility; the man who undertakes these must submit to privations; he must encounter unpopularity; he must sacrifice many of his present comforts to insure permanent security: and if he is not prepared—if he is unable or unwilling to do so, he is not a fit magistrate for such times, and ought to make way for those who are.

The 15th and 16th of the king had in contemplation magistrates of this active character, when it invested them with the extraordinary powers to which I shall call your attention. It enacts—

"That all and every justice of the peace shall have full power and authority to summon any person or persons within his jurisdiction, whom he shall have cause to suspect to be capable of giving material evidence concerning any offence committed against this act, and to examine him, her, or them relative thereto, on his or their oath, concerning any of the offences aforesaid; and, if he shall see cause, to bind such person or persons in recognizance, to appear and prosecute at the next assizes; and in case such person or persons, who shall be summoned for that purpose, shall refuse to submit to such examination, or to enter into such recognizance, it shall and may be lawful to and for such justice of the peace to commit the person or persons so refusing to the public gaol of the county, until he, she, or they shall submit to such examination, or enter into such recognizance.

Another extraordinary power is granted by a subsequent section—

"Be it further enacted, that any two or more justices of the peace, having reasonable cause to suspect any person or persons to be guilty of any such unlawful rising, assembling, or appearing, as aforesaid, or of having been in any unlawful assembly, to the terror of his ma-

jeaty's subjects, as aforesaid, or of intending so to be, may summon, and they are hereby required to summon before them the person or persons so suspected to be guilty, and bind him, her, or them over, by his, her, or their recognizance, to appear at the next general assizes, or general gaol delivery, to be held for the county in which he, she, or they shall reside, to answer such matters as he, she, or they shall then be charged with, and to be of good behaviour in the mean time; and, in case of refusal to appear to enter into such security as aforesaid, that then such justices of the peace shall have power, by warrant under their hands and seals, to commit every such person or persons to the common gaol of the county, there to remain until such person or persons shall submit to appear and enter into such security as aforesaid, or until discharged by due course of law."

These are new and formidable powers, with which the magistrates are intrusted in seasons of public commotion; they are made necessary by the emergency, and can only be justified by it; they militate against the humane first principle of British law, that every man shall be presumed innocent until he shall be proved guilty. Those who framed this law, reckoned upon the knowledge which a resident magistrate must have, in consequence of his influence, of what is passing in his neighbourhood, and enable him to commit to prison, upon his mere suspicion of guilt committed or intended to be committed, or of information in the power of witnesses to give: but the magistrate is not merely armed with these powers to bring delinquents to justice—the law supposes the possibility of their assembling, in defiance of its sanctions, and in that case contemplates the magistrate in the field opposing by force those who defy his authority:

"Be it enacted, that it shall be lawful for any justice of the peace, sheriff, under-sheriff, mayor, bailiff, or other peace officer, within the limits of his or their jurisdictions, taking with them the necessary assistance (and they are hereby empowered and authorized to command all his majesty's subjects of age and ability to be assisting them) to apprehend, disperse, resist, and oppose all persons concerned in any of the unlawful acts before mentioned in this act; and if any person or persons shall happen to be killed, maimed, or hurt, in the apprehending, resisting, or opposing any such offenders, then every such justice of the peace, sheriff, or other peace officer, and all and singular persons aiding and assisting to them, or any of them, shall be freed, discharged, and indemnified, as well against his majesty, his heirs and successors, as against all and every other person or persons, or for or concerning the killing, maiming, or hurting any such persons."

I am happy to be able to state that your county has exhibited two instances of public officers acting upon the authority of this section in the most spirited and effectual manner,

and I have no doubt that to their activity in checking the mischief in its infancy, you owe it, that it has made so little progress amongst you, compared to its advances in other counties, where a similar spirit has not been manifested. You know that I allude to the gallant conduct of your high sheriff, Mr. Izod, in the last autumn, and to the more recent instance in which my respected friend, the rev. Mr. Hunt, forgetting his infirmities, and disdaining the contemptible popularity which a less vigorous conduct might have insured, left his house in the middle of a winter's night, and, at the head of the king's troops, encountered and dispersed a large party of the banditti in arms. I am the more anxious to call the public attention to those circumstances, because I have heard that some men have had their minds sufficiently perverted to call in question the legality of the conduct of those gentlemen, or perhaps conceive, that by reflecting upon their zeal, they justify their own inactivity. I therefore have read the section to you, and have no hesitation to assert, under the control of their lordships higher authority, that whenever these miscreants are assembled in the commission of any of the unlawful acts alluded to by this section, not only the magistrates, but even every peace officer, is not only authorized, but bound to call upon every man within his jurisdiction, to collect the well affected, and compel the ill affected, to assist him in dispersion of them; and if in apprehending, dispersing, resisting, and opposing them, any life shall be lost, as was the case in the two instances to which I allude, the magistrates, and those acting under them, stand indemnified from the consequences. These instances show that the magistrates who will look for information may find it, and show, when found, what may be done upon it.

The statute of the 15th and 16th of the king also provides for compensation to those who have suffered in their persons or properties, either by the prevailing outrages, or their own zeal in support of the public peace. Such sufferers may come before the grand jury at the assizes, by petition, and upon establishing their claims, that jury is empowered and called upon to compensate their injuries by pecuniary remuneration, to be charged upon the county; thus interesting the public in another manner in supporting the laws and the general tranquillity. Subsequent statutes have very much added to the strength of the code which has been framed to check unlawful associations. Laws have been passed, which make the administering or taking unlawful oaths transportable offences; and an act, passed in 50th of the king, and which is partly a revival of the Insurrection act, contains a provision of the greatest wisdom, to which I feel it necessary to call the particular attention of the county. It recites, "that it has happened, that persons, who have given information against persons accused of crimes in Ireland have been murdered before trial of the persons

accused, in order to prevent their giving evidence, and to effect the acquittal of the accused ;" and it then enacts, " that if any person who hath given, or shall give information, or examination, upon oath, against any person or persons, for any offence against the laws, hath been, or shall, before the trial or trials of the person or persons, respectively against whom such information or examination hath been or shall be given, be murdered, or violently put to death, or so maimed, or forcibly carried away and secreted, as not to be able to give evidence on the trial of the person or persons against whom such information or examination was given, the examination or information of such person, so taken on oath, shall be admitted in all courts of justice in Ireland, as evidence on the trial or trials of the person or persons respectively against whom such information or examination was given; provided always, that the information or examination of a witness secreted shall not be evidence, unless it shall be found, upon a collateral issue, to be put to the jury trying the prisoner, that the person so secreted, was secreted by the person then on trial, or by some person or persons acting for him or her, or in his or her favour."

It is most important that the law should be publicly announced, and generally understood: it grows out of the prejudice which universally prevails in this county against all those who assist in the administration of justice, and the particular odium which attaches to those persons who, for giving evidence against the guilty, are stigmatised by the unpopular epithet of informer. That prejudice is the peculiar character of disturbed times, and marks the semi-barbarous state in which the people are always found, when the spirit of tumultuous association supersedes the authority of the law.—To it must be traced the many murders of witnesses, which we all remember, and the establishment of that reign of terror, which, in the insurrection preceding the rebellion, often frustrated, and had nearly extinguished, the administration of justice. To check this crime, prompted equally by the spirit of vengeance and the hopes of defeating the law, this strong and salutary statute was enacted; by force of which the written informations of the murdered man speak from his grave, and those against whom he had informed are affected by the full weight of all that he had sworn, unexplained, unqualified, and unimpeached. Nay, the very crime committed accredits the informations that had been sworn; for it is a natural presumption that if the testimony had not been true, it would not have been necessary to murder the witness. Let it then be known to the guilty and deluded people, that this atrocious crime not only cannot impede, but actually facilitates the course of that justice, which acquires a new strength from the very effort to overthrow it. Were the witness permitted to live, he would be obliged to give his evidence in the face of his country, liable to be sifted and

scrutinized by the advocate, the jury, and the judge. If his character could have been made questionable, by involving him in contradictions and inconsistencies—if there were any thing in his manner which might render his credit doubtful—if he were such a witness as could not bear the torture of cross-examination in a public court—if he had originally given false informations, and were disposed to retract them—all those advantages and chances are lost and taken away, by the very persons who conceived, that in destroying him, they destroyed his testimony. How often have we seen the truth elicited contrary to all original appearances, by that open and satisfactory discussion of evidence peculiar to our inestimable jurisprudence. Nay, how often have we seen that justice disappointed (an accidental evil, necessarily resulting from the excellence of the system) in instances where the simplicity or dulness of the living witness was engaged in an unequal conflict with the professional ingenuity of a counsel; yet even that hope of retreat is cut off by the commission of this crime; and the prosecution is assisted, and the defence is impeded, by the very crime which was perpetrated, in the vain hope of defeating the law. I wish, therefore, that this law should be publicly known; I wish the people to know, that on Friday last, a wretched man suffered death, in Clonmel, under this law, and was convicted upon the written information of a witness, murdered by the insurgents, after he had sworn them. I should wish also the magistrates to recollect, that this law imposes upon them, during the existence of public disturbances, the duty of caution in the taking of informations. They ought to take down the informant's testimony with particular and deliberate precision and exactness; so that, if a fatality should occur, the charge made by him may appear distinctly and unequivocally upon the written document, and not entrust the writing of so important a paper to a blundering clerk or ignorant country schoolmaster, as is too often the case in the ordinary discharge of magisterial business.

I shall only call your attention to one other legislative provision, which the misfortunes of the country have made necessary: I allude to the Arms act, passed in the 47th of the king, and amended in the 50th. It is not necessary that I should state its particular provisions, because I have reason to know that very particular instructions have been communicated to the magistracy; as to the powers which that act entrusts to them. Its object is, to disarm the deluded common people, who have of late unfortunately been possessed by a passion for obtaining arms, which it is impossible they can want for any good purpose. The magistrates have, under that act, particular powers, in cases where they have either sworn information, or reasonable suspicion, that arms are to be found in a particular place; and those powers I trust that they will exercise: for it is a monster amongst a civilized people, not to be en-

dured, that the illiterate peasantry should disarm the gentry, and give law to the country. It is, I say, impossible that those arms can be required for any good purpose. What have the labouring poor to do with arms? Their arms should be the instruments of their industry and husbandry. If the county was not convulsed by their crimes, they would not require arms for protection, and for annoyance they must not be entrusted to them. When the laws are obeyed, they are the protection of the poor man, and under their shield he reposes in panoply. It is their high attribute to protect the meanest against the highest man; no man requires arms to protect his rights in a country governed by laws. But that the universal rabble of the country, with all the wild ungovernable passions that belong to uneducated man, should possess themselves of all our arms, is a state of things not to be tolerated, and which must be changed. Carry, therefore, that law into vigorous execution; you know that those arms have been hitherto applied to rapine and murder; you cannot say to what further mischiefs they may be applicable. I am not prepared to say, that the tumults and outrages which disgrace this county are connected with domestic treason, or the project of foreign invasion. On the contrary, as far as I have been able to inquire, I cannot discover that they are. In that opinion I may be mistaken, and do not speak with confidence; but of this I am sure; that if ever rebellion should rear its audacious front amongst us—if ever the long meditated invasion should be effected, neither the one enemy nor the other could wish to find auxiliaries more suited to their purposes than the armed rabble of this county, hardened in crimes, habituated to plunder, and familiar with blood.

I have felt it to be my duty to exhort the public of this county against the dangers which threaten them, if the progress of unlawful association be not checked; to lay before you a summary view of the strong laws, in force against such a mischief, and to call upon you for a vigorous execution of them. God knows that I should feel this an odious duty, and one which, if I know my own heart, I am very unfit to discharge, and which nothing could induce me to undertake, if I believed that the deluded and unhappy people now in arms against the laws, were stimulated to their transgressions by those grievances under which wicked and profligate incendiaries pretend that they groan. This is the daily cant of incendiaries in another country, who know little or nothing about us, and of incendiaries in our own, who know the assertion to be false.

In the progress of this commission, I have not met with a single case, in which the disturbers of the public peace could with truth allege the pressure of a grievance, as a palliation of their crimes. I will not admit the humility of their rank to be a grievance—inequality of condition has been the dispensation of providence and the mandate of God, in all countries, and in all ages. If that be admitted

as a principle of insurrection, society must be disorganized.

If the man below me has a right to rise against me, then I have a right to rise against the man who is above me, and universal anarchy would result from such a doctrine. The true test of a people's happiness is this—are the people governed by equal and impartial laws, and is every man free and protected in his particular condition, be it what it may? I call the recollection of your lordships to the class of persons whom we have been obliged, in the progress of this commission, to bring to justice. I assert, that, with one single exception, there has not been one poor or squalid object exhibited at the bar; and I am not afraid to declare that no country in Europe could exhibit a peasantry better clad or better fed than those who, I am ashamed to say, have crowded the docks of the three counties which the commission has visited.

This insurrection has taken place in a season of the greatest plenty—in a part of the country abundantly rewarding the industry of its inhabitants, by a luxurious and redundant produce. The class of men engaged in it are those who have, or speculate upon having, such permanent interest, and tenures in land, as it is not the custom of any other country to give to persons of their description. If there be any demagogue in this court, who has indulged himself in the fashionable declamation, that the miseries of the people have driven them into excesses, let him look at the prisoner at the bar, and say what are his miseries? Let him point out one man in this crowded assembly better clad, or who has more the appearance of having enjoyed a healthful and comfortable existence than that man, whom his crimes alone warrant me to call unfortunate. If he perseveres in the assertion, let him hear the facts of this case now upon trial; he will find that the outrage with which the prisoner is charged, was committed upon the estate of the earl of Besborough, a nobleman proverbial as a good landlord, distinguished for his moderation and liberality to his tenantry, whose paternal protection of them is exhibited by the face of the district in which his property lies; a nobleman who does not himself reside, but whose estate is managed by a gentleman of rank and character, whom we all know, whose public spirit has improved that part of the county, in a degree which every man who travels through it must have observed, and who, with the most laudable public spirit, has brought forward this prosecution.

I repeat it again, the condition of the farmer and the peasant is in no part of the world better, and in few so good, as upon lord Besborough's estate. Part of that estate lately fell out of lease, and after the expiration of an old demise, had increased considerably in value. Part of the tenantry, encouraged by the pernicious example of the Tipperary Caravats, rebelled against the landlord's rights.—Every thing fair and liberal was done on his

part; so far from wishing to demise to middlemen and land-jobbers, the property out of lease was parcelled into three separate divisions, in order to enable the former occupying tenantry to take them: in two divisions the old tenants again took leases; in the third they were refractory, and some of them positively refused to give more than eleven shillings per acre for those lands, for which lord Besborough had been offered forty-two shillings. He was disposed to give them the lands at a lower rent than strangers would have paid, but they relied upon the system of terror which prevailed, and persevered in their combination, and at last the lands were set to a new tenant at more than forty shillings per acre. The prisoner at the bar, at the head of an armed banditti, in the night time, attacked the habitation, destroyed the property, and cruelly outraged the person and the family of the prosecutor, whose only crime was, the having, as an under-tenant, taken a part of the land from lord Besborough's new tenant, for which the former tenants would only offer about the fourth of its value. They administered an oath to him, binding him to give up his land the following day, and to serve threatening notices upon the neighbouring farmers; and on quitting his house, exclaimed—"Did you suppose that there were no Caravats in this county?"—The prisoner is not one of those who had even the pretence of this grievance, if it were one; he lived in the adjoining county and marched his ruffians into this, to assert the laws of the Caravats, and if possible to establish their dominion over the lives and property of its inhabitants. Let it not then go abroad that the special commission has been sped to enforce the laws against wretches goaded to madness by suffering, as has been audaciously stated in the incendiary prints. Let those who declaim upon the grievances of the common people of these counties, compare their condition with that of any other nation in Europe, I should rather say of that one nation into which almost all the other kingdoms of Europe have been unfortunately absorbed. Let them contemplate the conscript peasantry of France and her dependencies, torn from their families and homes, and marched in fetters from one end of the empire to the other; let him read the tremendous edict, issued within these few weeks, ordering, in a compendious mandate, a conscription of 120,000 youths, all born in one twelvemonth, and by one despotic word devoting the growth of a single year to the scythe of war—let him look at home for equal laws and a free constitution—let him look at the administration of justice, at the solemnity of this very trial, the institution of juries, and all the blessings which our unhappy people might enjoy *sua si bona norint*—if they could be taught to estimate their own advantages, and listened not to the seduction of demagogues and incendiaries; and let him look at France for iron despotism and arbitrary power—property insecure—personal liberty at the mercy of a tyrant's caprice—an enslaved

press, and the very liberty of speech and thought enchained. Let us, however, learn another lesson from the awful contrast—let us remember, that the absolute government of Imperial France, has not been established merely by the military power or the gigantic talents, or the portentous good fortune of the individual who wields it: it is the offspring of popular excesses, growing into wild anarchy, and settling in despotism, of that dominion of the mob, against the first approaches of which I warn you, which it is the object of the law now acted upon to counteract, and which I trust they will be able to subdue. Those laws are strong. If unfortunately the country should continue to be disturbed, it may be necessary to look again to some of those stronger measures which were resorted to in the most unhappy periods of our history—those measures to which the noble lord alluded in his charge to the grand jury; the adoption of which, unless in cases of extreme emergency, every constitutional man must deprecate, but which, should the melancholy necessity occur, there can be no doubt that the wisdom of the legislature will provide.

It is the wish of his majesty's government to restore the dominion of the laws by the force of the laws themselves. In this great object that government is energetic and indefatigable—and I assert, what is well known to every active magistrate who hears me, that every man who has required the co-operation of that government has obtained it: and that every person who has been disposed to assist in the enforcement of the laws, has received all the aid which the resources of the government could afford. But of what avail are the strongest laws, and the most active government, unless the gentlemen and the magistracy of the country shall join in the exertion? It is to the influence of their residence, and of their spirited interference, that we must principally look for support. By that influence, the deluded common people will be reclaimed—by that spirit, the incorrigible offender will be brought to justice. In this county I am sanguine enough not to entertain a doubt of the result; and I look forward with anxious expectation to the period which, I hope, is not far distant, when I shall be able to congratulate the county of Kilkenny upon the restoration of its character and tranquillity.

#### WITNESSES FOR THE CROWN.

*John Keneally* sworn.—Examined by  
Mr. Sergeant Moore.

Do you know a person of the name of James Keneally?—I do; he is my brother.

Where does he live?—In Ashtown.

On whose estate?—My lord Besborough's.

Were you in his house on the evening of the 1st of July last?—I was, in company with James Keneally, Thomas Keneally, David Keneally, and James Walsh, a little boy, and my mother.

What took place on that night, at your brother's house?—About the hour of ten o'clock, several persons called at the gate, which was locked, and they desired the sons of bitches to open the gate; it was in the front of the house.

When they called out, did any one from within give them an answer?—No.

What did they do after that?—One of them climbed over the gate.

What did he do?—Our dog ran at him, and he pointed his pistol at the dog, and missed fire.

What did they do next?—They unhinged the gate.

Did they then come forward to the house?—They did.

By lord *Norbury*.—How many did you observe coming towards the house?—I can't tell. Were there many?—There were.

Were there ten?—There were.

Mr. Sergeant *Moore*.—State what happened?—When they got through the gate, they came to the window, and the man that cleared the gate fired into the window. There were two other shots fired at the door; the party got into the house, by breaking the door. There were about twelve of them in the house; when the party got in, they said they were then in, in spite of us; they penned us, and swore us.

How many shots were fired?—About 5 or 6 fired at the door, before they got in.

What did they do in the house?—They had hold of me by the breast, and said, are you the occasion of taking this land?

Was the land taken shortly before?—It was.

Who took it?—James Keneally. I told them I was not the person; then the captain of them told me, to clear myself, and took a book out of his pocket.

What oath did you take?—I took my oath that I had no call to it at all; they then went to my brother Thomas, and swore him to give up the lands.

Did they ask you for your brother James?—Yes; but we told them he was not at home.

Where was he?—He was on the loft concealed—they left a message with my brother for James and Daniel Deacon to give up the land, and they swore him to give them a notice, which they gave him.

Did your brother promise that he would deliver the notice?—He swore that he would.

Were you frightened?—I was. One of them struck Thomas Keneally; and he heard that person say, "I believe you thought there were no Caravats in this country." They then took us out of the house to Tom Walsh's.

What did they do there?—They broke the windows, they then took us out of the house, but they did not say what for; it was to show them where Rakeen was—the night was so far advanced, they did not go as far as they intended.

How did you get away from them?—There were some houses in the field, and they were linked together; and they began to leap when they heard the report of the shots and said one of the party, "This is the light horsemen coming; we had better be off."

Whose house did they then go to?—Mr. Cady's house.

How long do you think they remained in your brother's house?—About two hours.

Did they call for light?—They did, but there was no candle lit—no light, except fires of straw.

Had you since that seen any one person that was there on that night?—No.

Would you know them again?—Yes.

Turn round, and see if you discover any of them in court—[Witness identified the prisoner.]

Do you positively swear that man was there, on that night?—I do—but I did not know his name at that time—I saw him in James Keneally's house—he had a gun.

Did you see him do anything in particular?—I did not.—He was not the head man, but I am positive he was one of the party.

How did you happen to see him after?—I saw him after, at Mr. Cox's of Castle-town, a magistrate of the county.

What took you to Mr. Cox's house?—I was about law; that man (the prisoner) was there.

Did you know him as soon as you saw him?—I did.

Was he a prisoner there?—He was not.

Have you any doubt that he was one of the party that attacked your brother's house?—No; he certainly was.

Who has the management of lord Besborough's estate?—Mr. Walsh.

Did you tell him what had occurred?—I did; I also told Philip Archer, a permanent sergeant, who was at Castle-town, that I knew the prisoner to have been one of the party.

Did you charge the prisoner, as soon as you saw him, with having been one of the party?—I did—the permanent sergeant told Mr. Cox; and on the same day I lodged informations against him, before Mr. Cox.

Cross-examined by Mr. *M<sup>c</sup>Nally*.

You say the party brought you out of the house to show them the way to Rakeen, to be their guide on that occasion?—Yes.

But they did not go there; you have no objection to say, that they did not know the way?—They pretended not to know it.

Will you, as an honest man, venture to swear, what another man intends, when he does not tell you his intention?

Lord *Norbury*.—You had better ask him, what right he has to know?

Mr. *M<sup>c</sup>Nally*.—My lord, I certainly will not ask him any such question. Your lordship will ask that question, if your lordship pleases.

Mr. *M<sup>c</sup>Nally*.—I put the question very

mildly; you are on your oath; the prisoner is on trial for his life; it is your duty to tell the truth—it is my duty to seek the truth. By virtue of your oath, will you swear to what is passing in another man's mind, when he neither tells you what he intends or what he thinks? You are thinking now; would you not think me a perjured man, if I were to swear to what you are now thinking?—I don't understand you; speak plain to me.

Would you take upon you to swear to what is passing in my mind?—I would not.

Don't you believe, that if it was not for the prancing of the horses, they would have brought you all the way to Rakeen?—They intended to go, and brought me part of the way, and then considered the night was too short, and went on their way to Tom Walsh's, to attack him.

You did not see the prisoner afterwards, till the 27th July; one month, wanting two days?—Yes.

You have said there was no candle light. Do you recollect, at any time, on being asked the sort of men that went to the house, that either you, or your brother, said, that they were small men; you know that the prisoner is a young man of six feet three inches high?—I recollect having said, that some of them were small, and others large; I did not know what countryman the prisoner was, until I was told; I believe him to be a Tipperary man.

Did you ever hear that there was a dispute between your brother and the prisoner, for not entertaining some yeomen?—I heard something about it.

Lord *Norbury*.—Did the prisoner say any thing to you about not entertaining Yeomen?—Not to me.

Mr. *M'Nally*.—Did any person speak to you about it?—I heard somebody say something about it, but it was not the prisoner; when he was taken into custody, and brought into the stable, by the guard, he said, "Sure I am not the man that was at your house?" I answered, and told him that he was.

Do you recollect a reward of 100 guineas having been offered?—I did not read the paper offering the reward, but I heard it read; the reward gave me no trouble; I was neither pleased nor displeased, nor delighted at it; I did not feel any gratitude for the person that offered the reward, nor would I take it if offered to me; I scorn it, if it were even 20,000*l.*; but I would go as far as my life against any person that injured me, or any one belonging to me.

Of what religion are you?—A Roman Catholic.

Do you believe, that in your church, it is necessary to the salvation of your soul, that you should receive the sacrament; you go constantly to mass?—Yes.

And to confession?—Yes.

When were you last at confession?—I can't tell.

How long since you received the sacrament?—[Witness did not answer.]

You know you could not receive the sacrament without first confessing your sins?—I could not.

Nor without repentance?—I could not.

Do you know and believe it to be a rule of your church, that the man who does not go to confession, and repent, and receive the sacrament, is esteemed a reprobate, and that he cannot expect to go to heaven; will you answer that question?—[Witness returned no answer.]

Lord *Norbury*.—What is the question?

Mr. *M'Nally*.—Whether it is not a doctrine held by the church of Rome, that any man, who does not go to confession, repent of his sins, and receive the sacrament, is not in a state of salvation?

Lord *Norbury*.—We cannot permit enquiries into the mystery of religion.

Mr. *M'Nally*.—My lord, I do not examine into the mysteries; I examine merely to religious tenets; I examine this witness to show, that if he neglects his religious duties, he does not, nor ought not, to receive credit from the jury. In the protestant ritual, as well as in the Roman Catholic manual, confession, repentance, and receiving the sacrament, are essential and sacred ordinances. The doctrine of consubstantiation and of transubstantiation, are mysteries among christians: but receiving the sacrament is a duty which no man, whether of the old or new church, can omit, with safety to his soul; no man of any religion, who shows himself as immoral as the witness on the table has done, deserves credit with a jury. I conceive that an honest and conscientious man will, with horror and disgust, reject the evidence of such a man.

Sergeant *Moore*.—There is only one question arising out of the cross-examination, namely, with respect to the reward.

Did you hear of the reward either before or after the prisoner was taken up?—Before.

*Thomas Keneally*, examined by  
Mr. *Prendergast*.

He corroborated all the essential parts of his brother's evidence, but did not identify the prisoner.

Mr. *M'Nally* then observed, that, as the defence of the prisoner was not to controvert the facts, but to show that the witness was mistaken, as to his identity, he would not take up the time of the Court by a cross-examination of the witness.

*James Deacon* examined.

Witness proved that he had received from Thomas Donellan, one of the threatening letters, which he (Donellan) had been sworn by the party to deliver to him.

*Edward Elliot*, examined.

Witness proved that he had received the threatening letter; he also read and proved it.

*Peter Walsh*, esq. examined by the *Solicitor General*.

Witness proved, that he was agent to lord Besborough; that the country had been in a state of disturbance; and that the notice of the reward was not made public, till after the prisoner was arrested, although there had been one publication, offering it, in a Waterford paper, on the day previous to his apprehension.

[Cross-examination not material.]

Case closed for the Crown.

PRISONER'S DEFENCE.

WITNESSES FOR THE PRISONER.

*James Greedy* examined by Mr. *Mac Nally*.

Do you know the prisoner?—I do.

Does he live in the same neighbourhood?—Within about four miles, as nearly as I can compute.

Do you know John Keneally?—I do.

Had you any conversation respecting the attack on James Keneally's house?—Yes; sure I had.

[Here the Solicitor-general had the witness, John Keneally, called up again.]

*Question by the Solicitor General*.—Do you know James Greedy?—I do.

Mr. *Mac Nally* proceeded in his examination of James Greedy.

What time had you the conversation with John Keneally respecting the prisoner?—It was before he was taken.

Were there any other persons present?—There were three other yeomen besides myself; the conversation was about the caravat business; J. Keneally came to the guard-house, and desired to have four men, that he might search for a man that he had set; three yeomen and I went with him, and being fatigued, we went, on our return, into Keneally's house, where we sat down by the fire; then Keneally told me that his brother lived in a rogueish place; I asked where that was; he said in Ramogue; I said I had no brother living there; we then began to speak about the Caravats, when John Keneally said, I will never stop, till I hang some of them, either by fair means, or by foul; Keneally then wanted us to go to the house of Richard Walsh, and to break open the door, and take him; we refused to go and break open the door, and told him our reason, that Walsh's wife was with child, and that we would not frighten a woman in that situation; after that, we went to Walsh's house, and told him to beware of J. Keneally, for that he would certainly hang him if he did not take care of himself; we sat down in

Walsh's house, and rested ourselves, and got something to eat.

Cross-examined by the *Solicitor General*.

You are a yeoman?—Yes.

By whose orders, or by what authority, did you tell Walsh to take care of himself?—No authority; I never had cause to wish him either well or ill.

Did you know Walsh's character?—I know not any thing about him; our only reason for not breaking the door was, because his wife was with child.

*John Keneally*, re-examined by  
Mr. *Solicitor General*.

Witness said, that it was not to Richard Walsh's that he wanted Greedy to go; it was to Andrew Archer's; he did not press them to break any door; he wanted them to go to the house of Matthew Farrell, and they refused to go there; James Walsh was the person that witness wanted to have taken, and the last witness and his companions refused to go there; since that, Walsh has fled the country, and left his cloaths and wages behind him, for which he has never since applied.

Did you ever tell James Greedy, that you would hang a Caravat, either by foul or by fair means?—No; but I told him, that whenever I did meet with any of the party, I would have them taken up by the army.

Here the three other yeomen who had accompanied the witness, James Greedy, were produced on the part of the prisoner. They corroborated this evidence in every essential circumstance; but, in the course of their cross-examination, contradicted each other in the statement of several facts.

*Anthony Galway*, esq. examined to the prisoner's general character, by Mr. *Mac Nally*.

Witness said, he had known the prisoner for the period of eight or ten years; that he had never heard even the slightest imputation against his character; he verily believes him to be a well-conducted and most industrious man; he does not believe him capable of joining in any riotous or infamous association, or cabal.

*Rev. James O'Neal* examined.

Witness said, he was curate of the parish where the prisoner resided; he is well acquainted with the prisoner's general character, and believes it to be that of a peaceable, sober, industrious man.

Defence closed.

*Lord Norbury*, in charging the jury, recapitulated minutely the entire of the evidence, making such observations on it, as was most material for their consideration. He concluded an able and perspicuous charge, by telling the jury, that the prisoner had only been identified



by one witness. That if they believed that witness was instigated by malice, and that he had declared, "that he would take away the life of a Caravat (or of any other human creature), either by foul or by fair means," or if they believed that he (the witness) had been mistaken in the person of the prisoner, they would, in that case, do that justice which the benignity of our law required from them—they would acquit the prisoner. But if, on the contrary, they believed what was sworn by that witness, there was sufficient evidence to sustain the indictment, and though it was a

most painful part of their duty, yet they ought to find him guilty.

The Jury returned a verdict of—GUILTY.

Mr. *Solicitor General* moved for the judgment of the Court.

Lord *Norbury* pronounced sentence of Death.

Mr. *Solicitor General*, in a speech replete with eloquence, talent, and ability, addressed the noblemen and gentlemen of the county of Kilkenny, on the state of the country; and here the commission closed.

687. Proceedings on the Trial of JOHN DRAKARD, on an Information filed by his Majesty's Attorney General, for a Seditious Libel; tried at Lincoln before the Hon. Sir George Wood, knt., one of the Barons of his Majesty's Court of Exchequer, and a Special Jury, on Wednesday March 13th: 51 GEORGE III. A. D. 1811.\*

MR. *Reynolds* briefly opened the case.

Mr. *Clarke*.—Gentlemen of the jury; the attorney-general, whom I have the honour of representing, has thought it incumbent upon him to bring before you the defendant, who is printer and proprietor of a newspaper, for the publication of the libel that has been just stated to you by my learned friend in the opening of the case. I am confident that you, and every good man, when the libel has been read, will be of opinion that the attorney-general has not stepped beyond the line of his duty, but that if he had acted otherwise, he would have been guilty of a dereliction of his duty, and would have dishonoured the trust that is reposed in him. The obvious tendency and object of the publication that is now brought under your consideration, is to create disaffection in the minds of the soldiers of this country to its government, to render them disinclined to the military service, to alienate their affections from their officers, to create a disinclination amongst all orders of society to enter that service, and to hold up to their view the superior attractions of the service of Buonaparté. I need not make any observations, in order to show you what dreadful consequences might ensue from such a publication as this—or how important it is, that this nation, at all times, but especially in the present awful situation of affairs, should prevent the circulation of such abominable writings, and bring the publishers of them to punishment. There is one observation, however, which I cannot refrain from

making, that one great and, perhaps, the only obstacle to the progress of Buonaparté towards universal dominion, is to be found in the forces of this country. It is not a matter of wonder that the admirers of that usurper, should be favourable to his plans. Now, this information charges the defendant with intending to injure our military service, and cause it to be believed that a more cruel mode of punishment is used in it than in that of Buonaparté; and thereby, to raise disaffection in the minds of the soldiery, and to prevent others from insisting into it. The question for your consideration, therefore, will be, whether this publication has the tendency which is imputed to it. If it has that tendency, the person who published it, is presumed to have intended to produce that effect. We cannot see into the hearts, minds, and thoughts of men; we can judge only from their style and expressions, and when these have the tendency imputed to them, we are bound to presume that they were published with a similar intention.

The libel begins thus, "ONE THOUSAND LASHES," printed in large characters, and set at the top of one of the pages of the newspaper. This was done for the purpose of drawing the particular attention of the readers to that article. Then follow these words—

"The aggressors were not dealt with as Buonaparté would have treated his refractory troops." Speech of the attorney-general when demanding judgment on Mr. Cobbett, convicted of having published a libel.

\* See the case of the King against John Hunt and John Leigh Hunt, *ante*, p. 368.

This is quoted as a part of the speech of the attorney-general. I presume, that when judg-

ment was demanded on one Cobbett, who had been tried for a libel, the attorney-general did make use of that expression. What Cobbett was tried for is not mentioned in this paper. He thus proceeds—

“Corporal Curtis was sentenced to receive ONE THOUSAND LASHES, but, *after receiving two Hundred*, was, on his own petition, permitted to volunteer into a regiment on foreign service.—William Clifford, a private in the 7th royal veterans battalion, was lately sentenced to receive ONE THOUSAND LASHES, for repeatedly striking and kicking his superior officer. He underwent part of his sentence by *receiving seven hundred and fifty lashes* at Canterbury, in presence of the whole garrison.—A garrison court martial has been held on board the Metcalf transport, at Spithead, on some men of the 4th regiment of foot, for disrespectful behaviour to their officers.” Two THOUSAND SIX HUNDRED LASHES were to be inflicted among them.—Robert Chilman, a private in the Bearstead and Malling regiment of local militia, who was lately tried by a court martial for disobedience of orders, and mutinous and improper behaviour while the regiment was embodied, has been found guilty of all the charges, and sentenced to receive EIGHT HUNDRED LASHES, which are to be inflicted on him at Chatham, to which garrison he is to be marched for that purpose.—*London Newspapers*.

Thus, gentlemen, it seems that this publisher culled from all the newspapers, every article, every instance of military punishment, that he could collect, for the purpose of consolidating them into one article; for what purpose I will leave you to judge. If you think it could be done for any other purpose than that stated in the indictment, if you think that his compiling this aggregate of punishment, could do any thing else than create disaffection to the service, and prevent any person from entering into the service, I am willing he should have the benefit of it. But if you do not think so, that circumstance alone, of embodying in one article, all the punishments inflicted in an army of 200,000 men, for the purpose of exhibiting them at one view, is sufficient to manifest his insidious and mischievous design.

You find again, “Two thousand six hundred” printed in large characters—the sum total of lashes to be inflicted among a number of refractory troops—but he does not tell how much each man had to receive for his share. What corporal Curtis was guilty of I know not. If he had mentioned what that was, it would have taken off the effect, and it would have been seen, that, instead of being hardly dealt by, his life had been forfeited, and might have been taken. But, as it stands, you are left to suppose that he had received his sen-  
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tence for some misdemeanor, for which it was highly improper so cruel a punishment should be inflicted. Clifford's offence is mentioned; it was that of kicking and striking his superior officer. But no comments are made upon it by the publisher, nothing mentioned to take off the venom of the notice, and justify the punishment. If he had made some observations on the dreadful consequences that would ensue in our army, or in any army, from conduct like this being allowed, it might have been inferred, that, instead of being punished with cruelty, he had been treated mercifully. But that would have weakened the effect of the publication. I have observed before, that we are told by this publisher, that two thousand six hundred lashes were given to a number of men for disrespectful behaviour to their officers, but the number of men is not mentioned, nor the amount of punishment which each individual had to bear. But we may collect from the manner in which this is here stated, that that number was not small. The disrespectful behaviour of these men might not amount to mutiny, but, if not put down by vigorous and prudent measures, it would speedily tend to the dissolution of the army. But no such observation as this is made by the publisher.

He then quotes the case of Chilman; he tells us he was guilty of disobedience of orders and mutinous behaviour. What disobedience he was guilty of, and what mutinous behaviour, I know not, but if such things as these are not to be punished, where is the safety of the country? What will become of our country? What will become of us all? The number of our army is most undoubtedly very great, and this is governed by a few officers, and if the troops are suffered to mutiny without punishment there will soon be an end of all order. But the publisher makes no observation of this kind, and leaves to the great mass of his readers, who are not accustomed to think very deeply, to suppose that this quality of punishment is cruel and unjust. Can this have any effect but that which is imputed to it? Must not this prevent others entering into the service? Can it be intended to have any other effect? It could have no other. The libeller then goes on into the body of his libel.

“The attorney-general said what was very true; these aggressors have certainly not been dealt with as Buonaparte would have treated his refractory troops; nor indeed as refractory troops would be treated in any civilized country whatever, save and except only this country.”

He here, you see, alludes to the sentiment expressed by the attorney-general, as if he had applied it to these particular instances noticed in the motto of the libel. He thus perverts the meaning of the attorney-general. Can he have done this with any good intent? Can he be suffered to hold up to the soldiers of this country with impunity, “you will be

treated in no civilized country as you are treated in this country?" Englishmen are held up in this publication as the only men in the world who so treat their military. Will it not thus have the effect to drive from the ranks of the army every one who can get loose, and prevent others from entering into it? The libeller proceeds—

"Here alone, in this land of liberty, in this age of refinement, by a people who, with their usual consistency, have been in the habit of reproaching their neighbours with the cruelty of their punishments, is still inflicted a species of torture, at least as exquisite as any that was ever devised by the infernal ingenuity of the Inquisition."

This man seems to have contracted a particular malignity against his own government—we find fault with others but we are still more cruel than they. Must not this have the effect of creating disaffection in the army—to say that we inflict an extraordinary punishment on our soldiers greater than ever was devised even by the infernal ingenuity of the Inquisition?

"No, as the attorney-general justly says, Buonaparte does not treat his refractory troops in this manner; there is not a man in his ranks whose back is seamed with the lacerating cat-o'-nine-tails; his soldiers have never yet been drawn up to view one of their comrades stripped naked—his limbs tied with ropes to a triangular machine—his back torn to the bone by the merciless cutting whipcord, applied by persons who relieve each other at short intervals, that they may bring the full unexhausted strength of a man to the work of scourging. Buonaparte's soldiers have never yet with tingling ears listened to the piercing screams of a human creature so tortured: they have never seen the blood oozing from his rent flesh; they have never beheld a surgeon, with dubious look, pressing the agonized victim's pulse, and calmly calculating, to an odd blow, how far suffering may be extended, until in its extremity it encroach upon life. In short, Buonaparte's soldiers cannot form any notion of that most heart-rending of all exhibitions on this side hell—an *English military flogging*."

Can any man living doubt the tendency and effect of this declamation, this sort of reasoning, this kind of argument, this dressing up of military flogging? What tendency can it have, if not that of holding up to public odium the military system of this country, and inducing a preference to that of Buonaparte? Can it have any other effect than to produce discontent, to be told that our soldiers are treated in the manner I have read to you? It must necessarily tend to produce disaffection and hatred against their officers, for all know very well that the punishment is inflicted by order of the officers, that sentence is passed by the officers, and that they cause the punishment

to be inflicted. When our army is compared in this way with other armies, can it be possible that this will not tend to produce disaffection and alienation in the soldier's mind? What situation do you suppose would this country be in? When you consider the number of officers in proportion to soldiers, if resistance to the officers be allowed, what will become of this country? I cannot, for the soul of me, conceive what other tendency it can be said that these expressions have, if not to bring odium on military characters and create mutiny and disaffection in the army. Who can say what effect such discussion will have? There are turbulent and wicked spirits, no doubt, among the soldiers. In so large a body of men no doubt some of that description can be found. What will be the effect, if men of this description read this publication among their comrades, and take advantage of their own wickedness to produce the effect of a publication like this? What would be the effect of it in the day of battle? Who can tell when our army meets another army what might be effected by this? Does it not say, whom are you British soldiers fighting for? For a country that does not consider you as men; for those who, instead of cherishing you as they ought, only punish you with cruelty and injustice. And whom are you fighting against?—Against one who respects soldiers, who treats them with kindness. Buonaparte does not treat his soldiers as you are treated, how much your condition would be improved if you were to change your master—it would be better for you to serve him as a master who would treat you with kindness and regard, instead of serving those who consider you, not as men, but treat you with cruelty and injustice.

"Let it not be supposed that we intend these remarks to excite a vague and indiscriminating sentiment against punishment by military law:—no, when it is considered that discipline forms the soul of an army, without which it would at once degenerate into a mob—when the description of persons which compose the body of what is called an army, and the situations in which it is frequently placed, are also taken into account, it will, we are afraid, appear but too evident, that the military code must still be kept distinct from the civil, and distinguished by greater promptitude and severity."

Even, although he admits, that it is necessary to keep the military code separate from the civil, and that the army is composed of such a description of men as makes it necessary to use promptitude and severity, yet he publishes this declamatory piece to men who he declares must be subject to promptitude of punishment.

"This necessity is of itself mortifying enough; and becomes more bitter when it is recollected that there is not an individual in

the middle classes, unless incapacitated by age or infirmity, who may not contemplate, as a very probable contingency, his being dragged from the protection of what he has been in the habit of calling the bulwarks of British liberty, deprived of that security in which innocence may confide, a trial by jury."—

This part of the libel must relate to the old militia and the local militia. He does not state this, but we may presume it from the expression of being dragged from the protection of what he has been in the habit of calling the bulwarks of British liberty. Now, gentlemen, no man is compelled to go into our army but when the necessities of the state require the services of its members; when it is necessary to protect the kingdom at home, when we are threatened with an invasion on our own shores, and it is necessary that the subjects should be called out to protect these. This libeller calls it being dragged away and deprived of that security of which we justly boast, a trial by jury. No one respects more than myself the trial by jury, but it would be insulting your reason to suppose that trial by jury could be introduced into our army. It would be wholly impossible to have that body governed by trial by jury. But is that the only security that innocence can confide in? Does he not wish to be understood to say, that, when so called out, Englishmen are deprived of the security of their innocence, that they have no security left in which their innocence can confide? Can any thing be more scandalous, more wicked, more abominable than such an observation as this, cast upon persons in a military capacity? Is it to be understood that in the army of England there is no protection for an innocent man that is brought before his officers? Who are the officers that compose the militia of the country? They are gentlemen, who, when their military duty has been fulfilled, return from it into the habits of civil life. They fill the posts which you, gentlemen, fill at this moment—they sit upon juries. And shall it be said, that men like those now assembled in the box, are no security to innocence when they are employed in the posts of the army? If you instil this doctrine into the militia-man, if you tell him that, although innocent, he has no security, no protection, what must be the consequence?

"Bereaved of every benefit arising from the cautious formalities of our law, and the lenient interpretations of its ministers, in short, cast at once out of the pale of that constitution in which he has been exulting, and teaching his children to exult, and exposed to the summary judgment and rigid execution of a tribunal of soldiers."

Does a man, then, the moment he enters the army and becomes an officer in it, the moment he takes upon himself to serve his country, does he forget every principle of humanity that has been instilled into him? Are soldiers as soon as they become soldiers cast out of the

pale of the community, and are they totally lost to it? If an assertion like this is made innocently, I know not what a man may not innocently say. For what purpose could it be introduced, but to inflame the minds of those who are subject to the control of persons of this description. This publisher tells the soldiers that they have no longer any thing to do with the constitution, that their officers are lost to every principle of humanity, that they are given up to such as are not capable of knowing how punishment ought to be inflicted on offenders.

"All this may happen (we might say has happened), and that without any fault committed by the persons so deprived of his immunities."

This is as much as to say, that innocence has been no security, that the soldier has been rigidly dealt with by his officers, without any thing to occasion it on his part. Can any thing more be said to bring into disesteem the constitution, which is essential to the happiness of the country?—Every one is bound to protect the privileges he enjoys, whether as a soldier or in a coloured coat; every man is bound, in case of attack being made on the country, to render that assistance which is described to be his duty by the military law.

"In case of an invasion, or a necessity arising from any great military exertion, it would undoubtedly happen to almost every individual of our readers."

What would happen? Would it happen that all of us would be deprived of that protection for innocence which we are now confiding in, rejoicing in, the moment we become connected with the military system? Whether innocent or guilty, would it be no matter? Would there be an entire end to that security which innocence now affords us?

"It has already taken place with those whom poverty had incapacitated to procure exemption. Robert Chilman, for instance, the poor private of the Bearstead and Malling regiment of local militia, who is to receive eight hundred lashes on his naked back, was probably an honest industrious labourer."

Does he know, gentlemen, has he any proof of what that Robert Chilman was—whether he was dragged from home as stated, or no? We know well that a great part of the local militia is filled up with volunteers. Was Chilman one of these, or was he dragged from the bulwark of British liberty, a trial by jury? One might infer from his offence, which was disobedience to orders and a mutinous conduct, that he was not an honest industrious labourer.—This, gentlemen, is not the usual conduct of the industrious labourers in this country. When they are called out, as they may be, to serve in the militia, it is not their character to be mutinous. I say, that, in stating this case fairly, he ought to have stated a pro-

bability like this. He ought to have stated it the other way, and to have presumed that the honest industrious labourer would have acted a part quite the contrary of this. But he has put it thus in order to create a disaffection amongst the militia to the government, by stating that they are dragged from their homes, and in a short time are sentenced to the severest punishment.

"He had most likely heard from the parson of his parish, especially if he happened to be a political one, that he lived in a land of freedom, in a land where there was but one law for the prince and the peasant, where no man can be punished unless he has been adjudged guilty by twelve of his equals, where every man was free to act as he pleased, provided he did nothing wrong. While congratulating himself on his good luck in being born in so happy a country, our labourer is waited upon by the constable, who acquaints him that he is drawn, and must go for a soldier. It is of no use to object that he does not like being a soldier; that he had rather go a haymaking or to drive his team: he is told that he must be a soldier, and that if he does not make his appearance on a certain day, at a certain place, he will be advertised as a deserter, and a warrant will be issued for his apprehension. This is strange news for our labourer to hear in the land of freedom: but, as there is no answering the constable's arguments, he attends, is enrolled, harnessed, and drilled. Meeting with several of his former associates similarly situated with himself, it is not a matter for surprise if our labourer turned soldier, should some evening, after a hard day's exercise, indulge a little beyond the limits of sobriety; and when an Englishman is tipsy he claims it as one of his privileges to be saucy. Only ten days ago, Robert Chilman might have got as drunk as he pleased; aye, and been saucy too in his cups, and no one would have thought of punishing him, unless he were very riotous indeed, and then, perhaps, he might have to sit in the stocks for an hour. But ten days have produced a wonderful change in his condition. What is only an indiscretion in a labourer, is a most atrocious offence meriting the infliction of torture, when committed by a soldier; and our labourer has, some how or other, been metamorphosed into a soldier, although certainly not by any act of his own, nor even with his consent."

What is this strange news our labourer heard? Is it, then, so strange, gentlemen, that, when the country is threatened with an attack, every one is called upon to put his shoulder to the wheel, and support the country? Where could he go a hay-making or driving his team, if he were not protected by the forces of his country? Is it strange, that he must be told by his clergyman that he must defend himself? The clergy know better than to instil into the minds of their hearers any thing else than that they may be called upon

to bear these trials. Is it strange he should be told, that he must do this, in order that he may return afterwards to his neighbourhood, and enjoy the sweets of life? If he is always to go a hay-making and driving his team, who is to resist the enemies of his country? Are we to wait for the enemy's coming, and bend and bow our knees before them? Is it harder to be called upon to protect our country than to do this? To defend one's country is the first duty of every man. It is a duty which ought to be taught by those whom this man calls political parsons, and by all other parsons. It is our first duty. It is for this purpose that mankind associate together, and every honest man knows that it is incumbent on him to fulfil it. Nor can the industrious labourer have lived so long and not been informed of it. It could not appear strange to him, that he was called out to protect his country, and then to return again to his rural labour, and enjoy the blessings of life, with his wife and family around his fire-side. The word "harnessed," gentlemen, is not introduced without some good reason; the object of it is clearly to show that the soldier has been entrapped and entrammelled, and treated like a beast of burden. This is the manner in which it has been represented that this man has been treated: and that, a few days after he has become a soldier, meeting with some old acquaintance, he gets intoxicated, for this he is called up before his officers, he is put to the torture, he is sentenced to receive eight hundred lashes. And this supposed labourer, convicted of this supposed offence, before he has acquired the habits of a soldier or forgotten the little indulgences of home receives such a supposed sentence for his conduct—suffers under a punishment, which is described as a most severe punishment. But is there any authority, is there any warrant for the conclusion? The object of this writer, gentlemen, is too obvious to make it necessary for me to waste your time by making any farther observations upon it.

"When in a state of intoxication, he chances to meet one of his officers: the last time he saw this officer was probably at the back of a shop counter in his own village, when that hand, which now wields a sword, flourished with much dignity an ell measure."

What effect can this have with respect to the officers who are appointed to rule over the militia, if it be not to bring those officers into contempt, and incite to disobedience of their orders? Those tradesmen who accept the post of officers in the local militia, are the friends of their country, they set a good example, they are deserving men; but what can have a greater tendency to bring them into contempt, than to represent them as flourishing an ell-measure, and that they have forgotten all the principles of humanity? It is a gross reflection upon those officers to suppose them incapable of humanity, and it brings contempt and hatred upon them, and renders effectual

every resistance to their orders, and prevents the beneficial effects of the service.

"To be sure it is the duty of a soldier to behave towards his officer with humble submission, but our soldier, his senses being at the time not the most clear, is totally blind to the officer, and can only see the village shop-keeper."

This, gentlemen, was published on the 24th of August.—It is notorious, that about that time the local militia was called out. It is notorious that many mutinies took place amongst them. And can this be wondered at when such venom as this was circulated amongst this local militia? Its proper and clear effect is, to incite them to disobedience and to contempt of their officers. Can any thing do this more effectually than the vile infamous slander that this publication contains?

"The consequence is, that he transgresses not the civil law of the land, which he was brought up to respect, but military discipline, of which until within these ten days he knew nothing: for this transgression he is tried, not by his equals, but by his superiors, by the very parties whom he has offended."

Can there be a more foul libel against the army than this? Do we not all know that the officers who bring the charge against a disobedient soldier, can no more sit on the court-martial, than the plaintiff in a civil action can sit upon the jury that is to try it? But here we are led to believe that the officer who brings the charge sits on the trial in order to condemn.

"And our freeborn Englishman is fastened with ropes to the stake, his naked flesh is cut open with whip-cord, and amidst his howlings you may hear him imprecating curses on the parson who had prated to him about liberty and equal rights."

We may be led to fancy from this man's description, that, for a slight offence, the soldier is tied up to the halberts, and that there he is unmercifully flogged, cursing the parson of his parish, for having preached to him about equal rights. But really, gentlemen, it would be taking up too much of your time to enlarge upon such foul insinuations as these.

"We have traced this description, not as the real case of Robert Chilman, of whom and of whose offence we know nothing, but as a statement of the probable effects of the present system. It must be evident to the most common observer, that what we stated, not only might occur, but that it is very likely to occur. We would not deduce from it a general condemnation of compulsory measures to raise a military force (nor indeed a condemnation of the plan pursued by our rulers), no, we are very sensible that they are often absolutely necessary; but as they involve, at least, an apparent violation of the freedom of the subject, we would recommend to the attorney-general

a tone less akin to the triumphant, when he next refers to the manner in which Buonaparte treats his soldiers."

He has traced this description, it seems, as what might probably happen; the statement he has made is the probable effect of the present system, and, as such, I deem his publication an attack upon the laws of the country. And can this be loyal? Can it have a good effect to sit down thus coolly and fabricate something that may happen, for the purpose of preventing men's serving their country, to prevent a force being procured that is necessary for our defence, and without which we shall be left open to our deadly enemy? Could he mean to serve us by these insinuations at the time when he so coolly published this libel, in order to counteract the effect of the laws, and prevent the execution of them, and to stir up the soldiery to oppose the laws and leave us a prey to the invader?

Is it a mortal offence in the attorney-general that he has cast reflections on Buonaparte? Suppose that this man should convince his countrymen that the government of Buonaparte is more desirable than ours, should we not justly esteem him the enemy of his country? His object must have been to persuade them to disapprove of the measures of our government, or why should he reflect upon what he conceives to be reflections upon Buonaparte?

One of the charges laid in the indictment is, that it has a tendency to prevent persons entering into the service. Would it not have that effect? It must necessarily have it when men are told that on entering the service they have lost all protection of their innocence, that they will be subject to torture, that they will be treated worse than the subjects of other states when they are made soldiers. For my part I know not how it can have any other effect.

"Buonaparte is no favourite of ours, God wot—but if we come to balance accounts with him on this particular head, let us see how matters will stand."

Has he stated any other head? Is there any other thing stated in respect of which you will believe Buonaparte to be no favourite of this man's? He may say so indeed, and he may think it necessary to say so, but no man living will believe that Buonaparte is no favourite of his.

"He recruits his ranks by force—so do we."

Is not this a foul falsehood? Are our ranks, are our armies recruited by force? Is any man forced into the ranks? Compelled to go abroad to serve his country? Is that the law of this country? Perhaps he means to say he is compelled to serve as a militia-man. But is this a fair comparison with the troops of Buonaparte? What! Do we, like him, recruit by force? Do we send out men to all parts of the globe at our pleasure,

and against their will? Do we severely punish the friends of our soldiers who take any measures to secrete them? If any man secretes a conscript, he is liable to a severe punishment; but if a friend, a relation, persuade a man not to enter the militia, is he imprisoned? And if he declines serving in the line, is he compelled? In our militia that sort of compulsion prevails which is applicable to every body. If a man does not find a substitute he must serve himself within the boundaries of his own country, in order to protect his property from foreign enemies. But here, in this publication, he is placed on a level with the soldiers of Buonaparte.

"We *flag* those whom we have forced—he *does not*. It may be said he punishes them in some manner; that is very true. He imprisons his refractory troops—occasionally in chains—and, in aggravated cases, he puts them to death. But any of these severities is preferable to tying a human creature up like a dog, and cutting his flesh to pieces with whipoord. Who would not go to prison for two years, or indeed for almost any term, rather than bear the exquisite, the almost insupportable torment occasioned by the infliction of seven hundred or a thousand lashes? Death is mercy compared with such suffering. Besides, what is a man good for after he has had the cat-o'-nine-tails across his back? Can he ever again hold up his head among his fellows? One of the poor wretches executed at Lincoln last Friday, it is stated had been *severely punished* in some regiment. The probability is, that to this odious, ignominious flogging, may be traced his sad end; and it cannot be doubted that he found the gallows less cruel than the halberts."

Can this, gentlemen, have any other effect, than to turn the hearts of the soldiers against us? The gallows less cruel than the halberts? Can any man who is persuaded of the truth of this be persuaded to enter into the ranks of the army?

"Surely, then, the attorney-general ought not to stroke his chin with such complacency, when he refers to the manner in which Buonaparte treats his soldiers. We despise and detest those who would tell us that there is as much liberty now enjoyed in France as there is left in this country."

So then, we have some little liberty left—not much I presume—yet rather more than what there is in France! Ample concession.

"We give all credit to the wishes of some of our great men; yet while any thing remains to us in the shape of free discussion, it is impossible that we should sink into the abject slavery in which the French people are plunged. But although we do not envy the general condition of Buonaparte's subjects, we really (and we speak the honest conviction of our hearts) see nothing peculiarly pitiable in the lot of his soldiers when compared with that

of our own. Were we called upon to make our election between the services, the whipoord would at once decide us."

So then, here it is stated in direct terms that the lot of Buonaparte's soldiers is preferable to the lot of the soldiers of this country!—Decide us—We have not the political principles of this man given to us, but we are told that if he were called upon to serve either in the army of this country, or in the army of France, the nature of the service would decide us? We should prefer the service of Buonaparte! Would this man, this Englishman—I presume he is an Englishman—in case an invasion should take place with which we are constantly threatened, in case we were invaded by our mortal enemy, and choice must be made by every man whether he will fight with his country or fight against it—would he prefer the ranks of Buonaparte? This patriotic printer of Stamford tells us that he would enter the ranks of Buonaparte; he shamelessly avows it. He would not fight for us. He would prefer Buonaparte's service, and quit the ranks of England to join the ranks of an enemy!

"No advantage whatever can compensate for, or render tolerable to a mind but one degree removed from brutality, a liability to be lashed like a beast. It is idle to talk about rendering the situation of a British soldier pleasant to himself, or desirable, far less honourable, in the estimation of others, while the whip is held over his head—and over his head alone, for in no other country in Europe (with the exception perhaps, of Russia, which is yet in a state of barbarity) is the military character so degraded."

This, gentlemen, speaks for itself; what can its effects be but that which is laid in the indictment—to alienate the affections of the soldiers, to induce them to desert from the ranks, and to prevent others from enlisting into them.

"We have heard of an army of slaves, which had bravely withstood the *noords* of their masters, being defeated and dispersed by the bare shaking of the *instrument of flagellation* in their faces. This brought so forcibly to their minds their former state of servitude and disgrace, that every honourable impulse at once forsook their bosoms, and they betook themselves to flight and to howling. We entertain no anxiety about the character of our countrymen in Portugal, when we contemplate their meeting the *bayonets* of Massena's troops—but we must own that we should tremble for the result, were the French general to dispatch against them a few hundred drummers, each brandishing a *cat-o'-nine-tails*."

Really, gentlemen, one cannot contain one's indignation at this. One's blood cannot help being stirred when one reads a libel like this. What is the manifest tendency of this? Does

it not depress the military character of this country, and elevate that of France? Can any other object be in view, than to depress our character and elevate the enemy's—to represent to the military that they are not soldiers but degraded slaves, that their enemies ought to think them unworthy of being treated as men, and ought to follow them with whips in their hands? Can any soldier bear this imputation? If he is a feeling man will he continue in the army when he is told he is not fit to contend with the army of his enemy, and will fly at the sound of the whip? I trust our gallant defenders cannot be influenced by such vile libellous trash, for if any thing should damp their ardour in their country's cause, if any thing should paralyze their arm, lifted in our defence, and induce them to become the soldiers of Buonaparte, there is an end to the existence of England. At a time like this, when army is meeting army, when the existence of millions depends on the exertion of all our energies, can a man who acts as this man has done, pretend to rectitude of intention? Can we believe that his publication was sent out for any good purpose? Buonaparte himself could not have desired a more able coadjutor than he. If himself had suggested a manifesto against the British armies he could not have found one more likely to serve his purpose. It has been very generally believed, gentlemen, that he has his agents in this country; and that they are assiduous in doing all in their power secretly to promote his intended purpose. And if I could suppose that any man was in the pay of Buonaparte I should think this libeller was so. I am confident that no honest man, no good subject, who has read this publication, can doubt that it is a pernicious and wicked libel; and I am confident his lordship will pronounce it a libel.

[On the part of the prosecution several witnesses were examined to prove that Mr. Drakard was proprietor and printer of the *Stamford News*.]

[The article contained in the attorney-general's information was then read by the associate.]

Mr. Brougham.—My lord, and gentlemen of the jury:—You have all of you listened with the attention the importance of the trial demands, to the very able and ingenious opening of the counsel for the prosecution; and you have heard the various and ingenious comments which were necessary to support the case in the manner in which it is made out to you, upon the alleged meaning which they have been pleased to impute, and on the various tendencies the counsel has thought necessary to ascribe to the publication whose merits you are to try. I confess I was struck in various parts of that learned gentleman's speech, with the remarkable ingenuity with which different passages of the composition on which he commented were twisted and pressed into his service; and although from knowing,

as I do, the context of those passages, with which, however, you were not made acquainted—and from knowing, as many of you may, the character of the person accused—and, gentlemen, from having besides a little knowledge of the general question of military policy—I had no doubt that the learned counsel would fail to make out the intention which he has imputed to the defendant's publication—yet I am ready to admit, that all that ingenuity could do in this way he has done.

I shall not, gentlemen, follow the learned counsel through the different parts of his speech; but in conformity to my own wishes, and in compliance with the positive injunctions of the defendant, I shall attempt to lay before you the composition itself, and to make for him a plain, candid, and a downright defence. Even if I had the same power of twisting and perverting passages in a direction favorable to my client, which my learned friend has shewn to twist and torture them against him—even were I possessed of that power—I am precluded from using it, not merely by the instructions I have received, but also by my own intimate persuasion that such a line of conduct is far from necessary—that it would be even hurtful to my case.

For the same reason, gentlemen I shall abstain from following another example set me by the learned counsel for the prosecution. He alluded, and that pointedly, to a case distantly hinted at in this publication—the cause of Cobbett who had been convicted by a jury of his countrymen of publishing a libel; and my learned friend took care to remind you of this circumstance, and from a line or two of the publication which you are now to try, he inferred that the subject of that libel was connected with the subject of military punishment. Perhaps, gentlemen, I might with equal justice, and even with better reason, allude to another case that is more directly connected with the one now in our view. Were I so disposed, I might go out of my way, and leave the merits of the present question—I might find no difficulty, since the example has been set me by my learned friend, and his conduct would justify me in following it—in calling to your attention a case of libel more resembling the present; a case which was very recently tried, but in which a conviction was not obtained. If I were so disposed, I might refer you to that case, in which twelve honest men, unbiassed by any interest, determined that the great bulk of this publication is not libellous nor wicked. But I will not avail myself of this advantage; I will rather suffer the experiment to be tried, in the person of this defendant, of the uniformity of juries; whether that which has been shewn to be innocent at Westminster can be adjudged guilty at Lincoln. I might put it to you whether the intentions of this defendant can be so wicked as they have been represented by my learned friend, when twelve upright men, in another court, have



held his publication to be not only lawful but innocent—to be by no means libellous. But, gentlemen, I will wave all these advantages on the outset; and confine your attention exclusively to that which is stated to be the evil of this publication. I beg you not only to lay out of your view the case of Cobbett who was tried for a libel that has no possible connection with the present case, but I will also ask you to lay out of your view the acquittal of the Hunts who have been tried for having published at least three fourths, and that which is called the most obnoxious part, of the contents of what you are now to try. All this, gentlemen, I desire you to lay out of your view—and beg you to confine your attention solely to the merits of this newspaper:—and if you shall be of opinion, after I have gone through the publication much less particularly than my learned friend, and without any of his ingenious, and, he must pardon me if I say, his sophistical comments.—if, after collecting the defendant's intentions, from compering the different parts of his discussion, you should be of opinion that he has wished fairly to discuss a question of great importance and interest to the country—that in discussing this question he has given vent, not merely to argument, but also to those feelings which are utterly inseparable from the consideration of his subject—if, in doing so, he has only used the right and privilege which all men in this free country possess, of discussing and enquiring into every subject—of calling to account the rulers of the country—(which indeed he has not done)—if in discussing the manner in which our rulers, not of the present day only but of past times also, have conducted themselves, he has only exercised an unquestionable and unquestioned right—the right of delivering his sentiments and of enforcing them—if this shall appear, you will be instructed by a higher authority than mine, and it will, I am sure, be your pleasure, as it will be your duty, to pronounce the defendant not guilty.

This, gentlemen, then, is the question you have to try; and to enable you to decide it I shall have little more to do than to request you to attend to the publication itself. I do not wish you to forget the comments of the counsel for the prosecution, but I shall take the liberty of laying the defendant's discussion before you more fairly and impartially than it has already been laid before you by that learned gentleman. It was the intention of the writer to take up a subject of high importance, a question that is universally interesting, a case that has often been alluded to by different writers. Gentlemen, he had a right to form his opinion upon this question; he had a right to form it although it happened to be inconsistent with the policy of the country. I do not say that his is a just opinion, that it is a correct opinion, but it happens to be his opinion, and he has a right to maintain it. If he thinks that the practice which he reprobates is detrimental to the service of this country; that

it produces reluctance among the inhabitants to enter into the military service; nay, that it has the worst effect on the country itself, I have yet to learn that there is any guilt in entertaining such an opinion—I have yet to learn that it is criminal to promulgate such an opinion on such a subject. And if in support of his sentiments he resorts to topics of various descriptions, I shall hold him innocent for so doing until I am informed from good authority, that a person may hold an opinion but that he must be mute upon that opinion—that he must see his subject only in a certain point of view—that he must look at it through a certain particular medium—that he must measure the strength of his argument by a scale which my learned friend seems to have in his possession—till I learn all this from a higher authority than the learned counsel, I shall continue to hold the doctrine that it is the privilege of a subject of this country to promulgate such fair and honest arguments as appear to him best adapted to enforce his fair and honest sentiments.

Gentlemen, how does the publisher of this piece proceed to declare and maintain what he believes. He begins "ONE THOUSAND LASHES." This is a short head, as it were, to the article. It is headed in capital letters, in the same way as other articles in the newspapers are usually headed. If you will look into this very paper, gentlemen, you will find that other articles begin in the same way. Here is "SPAIN AND PORTUGAL," and another article has "FRANCE" for its head, and another "MISCELLANEOUS NEWS."—Then follows a motto, or text, which the author had chosen to give force to what was to follow; and, according to the practice of newspaper writers, he took it from the speech of a celebrated law officer; choosing to quote him because he differed from his opinion. Meaning, therefore, to argue with that officer, he could not have done better than to seize hold of a passage from his speech; and he then proceeds to give a statement of the facts and sentiments which are connected with such passage; using various arguments, sometimes even a joke or two, as is no uncommon method when we wish to come at truth. He then states various instances of the punishment which he condemns, because he is about to discuss, or rather to shew the impolicy of the particular mode in which military punishments are now so frequently inflicted. The learned counsel for the prosecution has told you, that in order to obtain this collection of facts he had ransacked all the newspapers. Unquestionably, gentlemen, he had ransacked the papers; and if he had not brought together a statement of facts, if he had not in this way laid the groundwork for what was to follow, what would the ingenuity of that learned gentleman have suggested? You would have been told by him that all the defendant had said was mere vindictive turbulent clamour against a practice long received, yet but seldom put in force—that the author had found it

impossible to produce any instances of the infliction of that punishment. Gentlemen, the author was aware, that ingenious men would start this objection against him, and that it would have been a fair one—therefore he gets rid of it by laying the groundwork of his argument in a statement of facts. The language of what he has done is then simply this. “Do not think that what I am writing about is a mere chimera. You have the real existence of it before your eyes. It is taking place every day.”

Gentlemen, the manner in which he states these facts deserves particular attention. Had it been his desire to put the thing in the worst point of view in order to support his opinion, he would not have said what he has; for when a man is heated by his subject, and is looking out for arguments, he seldom finds those that are unfavorable to his opinion; if they are of that complexion, he turns his eyes away from them; and I might refer you to the speech of the learned counsel for the prosecution, as a proof of this. That learned gentleman very carefully turned his eyes off from those passages which would have given a different character to the piece from that which he imputes to it; or if he did not entirely omit them, he read them over to you in a low tone of voice, which was certainly not the general tone of his speech. It does appear, then, that this gentleman is not without the very fault which he charges, but charges wrongfully, upon my client. Had the defendant been anxious to impress the opinion upon his readers that the punishments which he instances were inflicted without cause—had he wished to raise forcibly the indignation of his readers against such punishments—punishments which he thinks injurious to the army, he would not have dwelt as he has done on the faults of the offenders. But he has not taken such an advantage of the question he was agitating as my friend has taken of him. He has told the circumstances which made against the offenders, and has, in so doing, offered a justification of the punishment. In the first instance it must be notorious to all of you, gentlemen, that in the case of corporal Curtis, the world was ignorant of the transaction, but that rumours of so unfriendly a kind were abroad, as to induce a patriotic and hon. member to bring the case before the House of Commons. He conceived its circumstances to be different from what they really were, and that great blame attached to the persons who sat on the court martial. Now, gentlemen, might not the writer of this article have availed himself of the ignorance of the people, in order to give point to his case, and a false interpretation to the conduct of the court martial? But he does not do this: for being ignorant of the true state of the case he avows his ignorance. The case was unknown till Col. Wardle brought it into parliament nine or ten days ago. The defendant could not, therefore, have told you why the

sentence was passed upon Curtis, but he could have told you the rumours that were then in circulation and which now appear to have been ill founded, but which were so feasible as to become the subject of a motion in parliament. This case, then, the defendant left on its own merits: in all the other cases he has told you distinctly the occasion that gave rise to the punishment, and so explicitly that my learned friend, with his usual ingenuity, was desirous of founding his charge upon his statement. Of Clifford he observes that he was sentenced to receive a thousand lashes for repeatedly striking and kicking his superior officer. “One thousand lashes!” For what? Might he not have stopped here? Had he been disposed to arraign the sentence of the court martial as any thing rather than candid and fair, he would have stopped here and not advanced to mention the occasion of the punishment:—but, by the mention of it, he fritters away the whole of the force of the case that my learned friend would fain make out. He says “for kicking and striking his officer;” and for such an offence no punishment can be too severe; although a particular mode of punishment may be improper. In one point of view the author loses by this statement, and undoes what he had been attempting to do; but the subject is taken up again in the course of his discussion, and then he tells you, with apparent reasonableness, that whatever the demerit of the offender may be, though he deserves death, though he deserves worse than death, yet the punishment that is appointed for him is wrong in point of policy, and not in point of justice. Other cases also he mentions in his motto, where the men had been found guilty of all the charges; and, in the last case, instead of stopping short when he mentions the sentence which would have aggravated the case and left the presumption that it had been executed, he fairly tells you that the lashes were not inflicted and that the man was marched to Chatham. It appears then that these instances are necessarily given as the ground work of the discussion, and are given in the fairest manner.

Then comes the discussion itself. I shall not trouble you with again reading much of it, because it has been repeated to you so often. On the perusal you will find that the writer supports his opinion by arguments which are in the mind of every man who has considered the subject. If they were not so now, they might be by a little recollection, because they have been so forcibly urged out of parliament and in parliament, where many members have eloquently spoken against that mode of punishment which prevails in our army, and, it is a melancholy truth, in our army alone. The statement made by this writer is copied, but not copied closely, from that which has proceeded from the pens of some of the ablest officers that have adorned our service: it is an echo, but not a full one, of what has been

repeatedly said in the House of Commons; his arguments have been used over and over again, and are, in fact, embodied in the system which the late administration carried into practice. The arguments then used are now employed by the writer, but in a mitigated form, in support of an opinion which he deems it incumbent on him to state strongly to his countrymen. These arguments are various, and are such as are not only applicable to his discussion, but I might state that his discussion could not have been carried on without them. Some of them may be dangerous—but the subject required that the danger should be incurred. One of them is founded on a comparison of ours with the French service.—Gentlemen, it is true, and it is a deplorable truth, that the latter is one of the first services in the world in point of discipline, in point of valour, and of every thing that constitutes a great army. Next to our army, there is none in the world that has gained so many victories, that has been so constantly sure of success, none in which the discipline is so well observed, and where more is made out of the discipline. This is a deplorable fact, and every European power but our own has suffered from its truth. Now was it not natural, nay, necessary to the argument of this writer, that he should appeal to the French discipline, and ask in the outset, are such punishments as he condemns inflicted by it? If he had not said that in the French army the practice of flogging is not known, nothing could have made up so great and obvious a deficiency in his statement. Would not the answer have been ready in the mouth of every one, “do not other armies flog as well as we?” Would any one who approves of flogging in our army, and is capable of reading two lines, read thus far and not stop to exclaim, “ours is not the only army that flogs its soldiers. France does the same, and a great deal worse;—it is a necessary measure; it is the lot of a soldier, and he must submit to it, and there is no arguing against it!” This would have been the answer of all the military men, and of all others who are favourable to the practice.

After the writer of this publication had introduced his statement, aware that it was of a delicate nature, that he had got upon dangerous ground, and that his motives might be abused, he limits his assertions by the plainest qualifications. “Here,” said he, “I enter my protest against any unfair deduction from what I have advanced”—and if any thing surprised me more than the rest in the speech of my learned friend, it was the manner in which he passed over the limitations of the writer. I shall not go through the whole of them, but will give you a specimen or two. He says—“Let it not be supposed that we intend these remarks to excite a vague and indiscriminating sentiment against punishment by military law: no, when it is considered that discipline forms the soul of an army, without which it would at once degenerate into a mob; when the description of persons which compose the body

of what is called an army, and the situations in which it is frequently placed, are also taken into account, it will, we are afraid, appear but too evident, that the military code must still be kept distinct from the civil, and distinguished by greater promptitude and severity.”

Thus he vindicates himself, gentlemen; and I should have thought he had protected himself from misrepresentation, had I not heard the remarks of the learned counsel, who, with his usual ingenuity, twisted against him the whole of his argument, respecting the hardships to which the soldier is exposed. What could he by this proviso have thought to protect himself against, if not against the insinuation that he was exciting the soldiers to mutiny, by telling them that they are hardly dealt by in being subject to military law, in having no trial by jury, and in being subject to such punishments as are known in our army alone. He had this in his eye; he was aware of the probability of the charge, and to protect himself he protests in plain terms against such a construction being put upon his assertions.

In like manner, he was aware, that a certain class of men would be ready to cry out, that he was one of those persons who are over officious in promoting the wishes of the enemy, who are ever dissatisfied with what is done at home, who love nothing but what is French; and who are fond of raising a point of comparison, that they may exhibit French customs in a favourable view. In order to caution his readers against such a construction of his words on the one hand, and on the other to guard them against entertaining such wrong, such un-English sentiments, he proceeds in the words I shall read to you. “Bonaparte is no favourite of ours, God wot! But if we were to balance accounts with him on this particular head, let us see how matters will stand.” He might have appealed to his general conduct since he edited this newspaper; he might have appealed to the bold and manly tone with which he has frequently guarded his readers against the designs and character of Buonaparte—but not satisfied with this, he says explicitly, “do not think I am holding up the enemy to your approbation; it is upon this one subject, and on this one alone, that I am of opinion that there is not so great a difference against him, and in favour of our system.” This is the sum and substance of his argument, and this it is both loyal and laudable in him to support. Had he been the evil-minded, seditious, libellous person he is described to be, would he have taken occasion to have stated this? Had he been disposed to hold up Buonaparte’s conduct to the admiration of the soldiers, would he, in the passage which I am now going to read to you, have dwelt unnecessarily on the severities of the French discipline? Alluding to the French ruler’s treatment of his soldiers, he observes, “It may be said, that he punishes them in some manner,—that is very true—he imprisons his refractory

troops—occasionally in chains—and in aggravated cases he puts them to death.”—Need this writer have told his readers all this? Might he not have stopped when he had said that it was true the French soldier was punished in some manner? Need he have particularised the awful punishments which are inflicted upon that soldier in proportion to his crime? He does, in fact, mention punishments existing under the French discipline, which, in the opinion of the majority, will, I am afraid, appear more severe than flogging. Although it may be his idea that flogging is worse than death, yet, I believe, were we to poll the country round, we would find but few who would not rather take the punishment of the lash than be sent out to be shot. It may be very well in talk to give the preference to death, but were it to come to the push, I believe that there are but few men, nay, but few soldiers, who would not gladly commute it for a flogging. How then can it be said of this writer, that he holds up to admiration the system of Buonaparte? Not content with stating that he punishes his troops in some manner, he must add, and unnecessarily for his argument—that he imprisons them in chains—and puts them to death—That is to say, he inflicts upon them the most awful of all human punishments.

One would have thought, gentlemen, that this would have been enough to have vindicated the writer's intention, and have saved him from misrepresentation. Even supposing he had no other readers than soldiers, one would have thought that he had taken precaution enough to prevent mistakes; but he adds another passage which puts his intention beyond all doubt, “We despise and detest those who would tell us that there is as much freedom now enjoyed by France as there is left in this country.” This, gentlemen, I will read again, because it was hurried over by the learned counsel. “We despise and detest those who would tell us that there is as much liberty now enjoyed in France as there is left in this country. We give all credit to the wishes of some of our great men, yet while any thing remains to us in the shape of free discussion, it is impossible that we can sink into the abject slavery in which the French people are plunged.” Gentlemen, can this writer be called a favourer of France? Could stronger language against the system of the French government have been used? He speaks of the “abject slavery” in which the French people are plunged—and he adds in the same strain, and indeed as a very natural consequence, “we do not envy the general condition of the French subject.” There are many other passages in this publication, the general purport of which is, that if ever a man had a strong opinion against the character and measures of the ruler of France—at the same time thinking highly of his military discipline—an opinion which many of our greatest men have held equally and conscientiously—if ever a

man sent such an opinion forth to the world, guarded by explanation, and coupled with undeniable facts to support and illustrate it—(and statement and facts should always go together in order to produce their proper effect)—I say, that if ever such a man existed, it is the person on whose conduct you are now to pronounce.

With respect to the passage in the middle of this publication, on which much stress has been laid by the counsel for the prosecution, because it was not included in the article for publishing which the Hunts were tried; it contains a statement of the whole of the general arguments usually urged against punishment by flogging, as applied to the case of the militia force. These arguments have been often discussed; they have been heard from the mouth of a Windham downwards; and it has been usually admitted, that whatever may be said for the punishment of flogging in the line, that it is peculiarly inapplicable to the militia service. The usual arguments on this subject are forcibly stated by the writer of this piece. In order to illustrate them, he takes an instance, and as the name of Chilman came in his way, he makes use of it. But he guards his readers against supposing that he imputes any blame to the court martial which tried this man. The writer had no sooner stated a case, and traced the description of it, but he represents it, not as an individual instance, but “as being the probable effects of the system.” His language is this.—“Do not imagine that I have held up to your particular notice the court martial that has thus sentenced Chilman. I do not mean to confine your attention to this particular instance, I take him as I would John-a-Noaks—or any one of the militia who is exposed to the same temptation, who is taken from his family by force, and, after having committed certain irregularities, is punished in this dreadful impolitic way.” And by so doing the writer has only followed the example of all the great authorities that have gone before him; whose arguments have turned upon the manner in which the militiamen have been taken from their homes, and the hardship of exposing them to this odious cruel punishment, when it was not their choice to enter or not to enter the service; men accustomed to live under the privileges of the civil law of the country are dragged away from it.—And worse words than these have been applied to the practice by our own civilians. The writer, following the example of others, asks you whether it be fair and humane to treat such men with the same severity for a venial offence committed with a friend and companion, as you inflict on him who enters voluntarily into the service, and him who chooses to abandon the mercies of the civil law?—Whether it is equal and just to visit both these with the same cruel punishment? This is the drift and jet of this writer's argument. In this way he was obliged to treat his subject, and in this way he has

followed the steps of the great characters in our army who have written before him.

Gentlemen, before I go any farther, I will ask you to consider how far we have already got in the case you are trying? It is admitted—indeed it cannot be denied—that an Englishman has a right, which no power on earth can take away from him, of forming an opinion. I do not say on the measures and character of our rulers; that right he certainly has, but it is not involved in the present question—this author has done no such thing; it cannot, I say, be denied that an Englishman has the privilege of forming his own opinion upon the policy, expediency, and justice of the system that is adopted by his rulers.—Having formed this opinion, it cannot be denied that he has a right to promulgate it; and surely it can no more be denied than the two first propositions can be disputed, that he has a right to support his own opinion by his own arguments, and to recommend its adoption in what he may deem the most efficacious manner. And, gentlemen, let me ask you further, if you will withhold from him the privilege of appealing to such topics for the ornament of his opinion as suggest themselves to his mind? Are you to tie him down to any particular set of subjects? Will you say to him, “you may have your opinion, but take care how you make it known to the world?” Will you say to him, “you may support your arguments, but in so doing, you must choose those I shall point out to you; you must steer clear of every thing that I do not approve of; you must take care to state nothing forcibly—to argue dully, to support your argument feebly, to illustrate it stupidly.” Is this free discussion?—Is this the way in which you would have that which is done in this country compared with that which is done in France? If we have any privilege more important than another, gentlemen, it is, that we may discuss freely. And is it by this straitened, this confined mode of discussing subjects, that every one of us must be regulated, who, when we look first at home, and then look to France, are so thankful that we were born in this country?

But, gentlemen, I should like to ask, if this is to be the extent of privilege that we are to enjoy? I have hitherto merely inquired how far a man may go in support of his arguments by illustrating them—but if I were to go a step farther I should not much exceed the bounds of my duty. Has not a person in this country a right to express his feelings too? Since when is it (I would ask, that we may know the era for the purpose of cursing it!) by whom was it brought about—that we may know the author and execrate his memory)—that an Englishman, feeling strongly on interesting subjects, is prevented from strongly and forcibly expressing his feelings? And are the sufferings of British soldiers the only subject from which the feelings of compassion should be excluded? Living as we do in an age when charity has a wide and an undis-

puted dominion; in an age when we see nothing but monuments of compassionate feeling from one end of the country to the other; in which, not only at home, but as though that was too confined a sphere, we are ransacking foreign climes for new objects of relief; when no land is so remote, no place so secluded, as not to have a claim on our assistance—no people so barbarous or so strange as not to excite our sympathy:—is this a period in which we are to be told that our own soldiers may not claim our mercy? Granting, gentlemen, that they are not barbarians; admitting that they are not strangers, but are born amongst us, that they are our kinsmen, our friends—granting that far from being unknown to us, we know them by the benefits they have rendered us—by owing them an unrepayable debt of gratitude—I put it to you, gentlemen, whether we are to exclude them from what we give to all mankind; from the effects of our feelings and our sympathy; from that universal law of nature which gives to all the victims of cruelty however distant, however estranged, a home, a settlement, in every compassionate heart? Is this a discovery of the present time?—But it is unnecessary to put it stronger home to you. If any one subject is nearer to our hearts than another, or ought to be so to British subjects, it is the condition and treatment of our brave troops, to whom we owe so much, to whom we owe a load of gratitude which was never so heavy as it is at present, and in whom now all our hopes are centered.—How, gentlemen, can you visit a person with two years imprisonment in a dungeon, who, feeling strongly upon a subject of so much interest, expresses his feelings with that warmth which it becomes him to exercise? If he had had no feeling he would have been unworthy of his subject—and having feeling, had he shrunk from giving vent to it, he would have proved his cowardice: he has, however, been particularly cautious, he has done little more than reason the point, he has not given full vent to his feelings, but in as much as he has connected his emotions with his argument, you are to take what he has said as a proof of a sincere and an honest heart.

I have already stated to you, gentlemen, that the sentiments expressed in this publication are not the sentiments of this author alone; but that they had their origin in the ablest men of the country; men whose high rank in the army render them not the worse witnesses for the defendant. I have now in my hand a work by sir Robert Wilson—an officer whom to name is to praise—but who, to describe him in proper colours, ought to be traced through his whole career of service, from the day he first entered the army, up to the present time; whose fame stands upon record in almost every land where a battle has been fought by the English troops, both in this and the last war. It is perfectly well known to you that on one occasion by his own personal prowess he saved the life of the emperor, for which service he re-

ceived the honour of knighthood. You must know that afterwards through the campaign in Germany, when serving with the allied armies, he rendered himself celebrated by his skill and courage; as well as in our gallant army in Egypt. But not merely is he an ardent friend to the British cause, he is known throughout the whole of the British army as one of its most enthusiastic defenders. Far from being a friend to Buonaparte, of whom and of his friends you have heard so much to-day, nothing more distinguishes him than an implacable hatred to that enemy of his country. To so great a length has he carried this, that I believe there is no spot of European ground, except England and Portugal, in which he would be secure of his life; so hostile has been his conduct and so plain and direct his charges against Buonaparte, that from the period when he published his well-known work (containing assertions against that person, which for the honour of human nature one would fain hope are unfounded) he has been held in an abhorrence by the ruler of France, equal to that which he has displayed against him. From 1806, when the plans for the regulation of the army were in agitation, and when sir Robert published those opinions which the defendant has now republished, up to the present time, he has not received any marks of the displeasure of the government, but on the contrary has been promoted to higher and to higher honours, and has been placed in a distinguished situation near the king himself. During the discussion on our military system, when all men of liberal minds were turning their attention to the subject, with laudable promptitude and public spirit, he addressed a letter to Mr. Pitt, and entitled it, "An Inquiry into the present State of the Military Force of the British Empire, with a view to its reorganization."—That is to say, with a view to its improvement, sir Robert Wilson, with, perhaps, objectionable taste, using the word reorganization, which is derived from the French. In this publication the gallant officer, animated by love for the army, and a zeal for the cause of his country, points out what he conceives to be the great defects of our military system; and the greatest of all these he holds to be the practice of flogging. He describes this punishment to be the great cause which prevents the recruiting of the army, which in one word, produces all manner of mischief to the service, ruining the character of the soldier, and chilling his zeal. I dare say, gentlemen, that you already recollect something which you have heard this day; I dare say you recollect that the defendant is expressly charged with a wish to deter persons from enlisting, and to create dissatisfaction in the minds of the soldiery because he wrote against flogging; sir Robert Wilson, you see, thinks that very opposite effects are to be produced. There are fifteen or twenty pages of the pamphlet in my hand which contain an argument to support this opinion. And when you shall hear how the subject is treated by sir Robert, you will

perceive how impossible it is for a person who feels, to avoid, in such a discussion, using strong expressions. You will, as I read, see that sir Robert comes from generals to particulars at once, and describes all the minutiae of military punishment. He first states that, "corporal punishment is a check on the recruiting of the army"—he then goes on, "My appeal is made to the officers of the army and the militia, for there must be no marked discrimination between these two services, notwithstanding there may be a great difference in their different modes of treating the soldiery. I shall sedulously avoid all personal allusions"—(and, gentlemen, you will observe the present defendant has been equally cautious—not a single personal allusion is to be found throughout his discussion)—"The object in view is of greater magnitude than the accusation of individual malefactors."—(Malefactors, gentlemen, a much stronger word than can be found in the publication of the defendant)—"I shall not enter into particulars of that excess of punishment, which in many instances has been attended with the most fatal consequences. I will not, by quoting examples, represent a picture in too frightful a colouring for patient examination."—Sir Robert Wilson then alludes to the crimes for which this dreadful punishment is inflicted. He says, "How many soldiers whose prime of life has been passed in the service, and who have behaved with unexceptionable conduct, have been whipt eventually from an accidental indiscretion. Intoxication is an odious vice, and, since the duke of York has been at the head of the army, officers have ceased to pride themselves upon the insensate capability of drinking; but, nevertheless, flogging is too severe as a general punishment for what has been the practice of officers." Here, you see, gentlemen, the gallant writer brings in aid of his argument an allusion of a much more delicate nature than any that has been made by the defendant. He speaks of the misconduct of officers, and leads the mind to contrast its trivial consequences to them with the severe punishment that awaits the soldier guilty of the same offence. A more delicate subject than this cannot be imagined. It is as much as if he should say, "do not punish the poor private so cruelly for a fault which his superior does not scruple frequently to commit, and for which no chastisement is awarded to him."—Sir Robert proceeds—"absence from quarters is a great fault and must be checked: but is there no allowance to be made for young men, and the temptations which may occur to seduce such an occasional neglect of duty?"—Gentlemen, do you not immediately, on hearing this, recur to the language used by the defendant when describing the imaginary case of Robert Chilman? This is exactly his argument—he too, thinks that allowance ought to be made for a young man—particularly one forced into the service—who may, as he says, after a hard day's exercise, meet with some of his companions, and indulge a little beyond

the bounds of sobriety—and he also thinks what sir Robert Wilson has thought and published before him, that flogging is a very improper punishment to be inflicted on such a person for such a crime.—The pamphlet then in glowing language—language much more forcible than the publication which you have to try—describes the ill effects of flogging. “Corporal punishments never yet reformed a corps, but they have totally ruined many a man who would have proved under milder treatment, a meritorious soldier. They break the spirit without amending the disposition.”—And now, I beseech you, mark the high colouring of this officer, after all you have heard against the description of the defendant.—“Whilst the lash strips the back, despair writhes round the heart, and the miserable culprit viewing himself as fallen below the rank of his fellow species, can no longer attempt the recovery of his station in society. Can the brave man, and he endowed with any generosity of feeling, forget the mortifying, vile condition in which he was exposed? Does, not, therefore, the cat-o-nine tails defeat the chief object of punishment?”

Sir Robert Wilson then comes to the comparison between the French military discipline and ours, on which so much stress has been laid in support of the prosecution, and you will hear, that this defendant has said nothing on this subject which had not before appeared in the pamphlet I have now in my hand.—He says, “Gentlemen who justly boast the most liberal education in the world, have familiarized themselves to a degree of punishment which characterizes no other nation in Europe”—thus, in fact, supplying the defendant with the words of this publication.—“Here alone is still perpetrated, &c.”—In a subsequent paragraph sir Robert Wilson specifies France by name, so essential was the notice of the French discipline to his subject. He says, “England should not be the last nation to adopt humane improvements—France allows of flogging only in her marine.”—In conclusion, the gallant officer appeals to the character of the present age, which he says, “is a remarkable epoch in the history of the world. Civilization is daily making the most rapid progress, and humanity is triumphing hourly over the last enemies of mankind. But whilst the African excites the compassion of the nation, and engages the attention of the British legislature—the British soldier—their fellow countryman—the gallant, faithful protector of their liberties, and champion of their honour—is daily exposed to suffer under an abuse of that power, with which ignorance or a bad disposition may be armed.”

Gentlemen, I think I may venture to say, that in this passage also you recognize something which you have this day heard before. You may recollect the humble attempt of the humble individual who now addresses you, and who asked you whether those who feel so much for strangers, might not be allowed to feel a little for the defenders of their country. The only

difference is, that sir R. Wilson's language is more forcible—more impressive. His picture stands more boldly out—his language throughout is more glowing than that used by the defendant, or by his advocate.

[The learned counsel then alluded to the opinions of general Stewart, of the 95th regiment, who, when a brigadier general, published a pamphlet, entitled, “*Outlines of a Plan for the general Reform of the British Land Forces.*”]

This officer first asks “how will the several parts of our present military discipline be reconciled to common sense, or to any insight into men and things?”—and then proceeds to specify the errors in our system which cannot be so reconciled. The chief of these is this mode of punishment, which every friend to the British army unites to condemn. He says, “The frequent infliction of corporal punishment in our armies tends strongly to debase the minds and destroy the high spirit of the soldiery—it renders a system of increasing rigour necessary—it deprives discipline of the influence of honour, and destroys the subordination of the heart, which can alone add voluntary zeal to the cold obligations of duty.” He further says, “The perpetual recurrence to the infliction of infamy on a soldier by the punishment of flogging, is one of the most mistaken modes for enforcing discipline which can be conceived.”—And then, gentlemen, as if there were some fatality attending the discussion of this question—as if there was something which prevented any one's touching the subject without comparing the military discipline of France with our own, general Stewart is scarcely entered on his argument before he is in the middle of this comparison. He says, “In the French army a soldier is often shot, but he rarely receives corporal punishment, and in no other service is discipline preserved on truer principles.” You hear, gentlemen, what general Stewart says as to the superior discipline of the French army—he holds it up as a pattern to our service—a service in which he is one of the most distinguished individuals.

But lest it should be said that these were young officers (although were we to reckon their campaigns, or even their victories we might esteem them old)—lest deference may be denied to their opinions because deficient in experience—and, above all, to show you that this subject, the more it is considered the more does it teem with vindications of the defendant—to shew you that it is a subject calculated not only to animate the feelings of the young, but even to melt the chill of age—to shew you that, although emotion may have become blunt under the pressure of years, yet that this is more than compensated for by the longer experience of the mischiefs which arise from the horrible system of flogging—an experience which occasions the apathy of the old to rival the indignation of the youthful—I will now produce to you the publication of a veteran.

A publication also intended to point out, for the purpose of doing away with those defects which tarnish our military discipline. I allude to a work from the pen of an officer in the highest ranks of the service—lieutenant-general Money—who, since the writing of that work, has been promoted to a full general. You shall now hear what that veteran says on the subject of flogging—he whose years are numerous as his services, and who is esteemed the strictest disciplinarian on the staff: an officer to whom the command of a district has been entrusted, —a signal proof of the confidence reposed by government in his honour and military skill. You have been told that attacking the scourge, as applied to the backs of our soldiers, has a tendency to injure the army, and to deter persons from entering into it, general Money, you will find, speaks directly to these points—and you will find him declaring, that this practice which our author condemns, does itself occasion desertion—and deter persons from entering into the military service of their country. The publication to which I allude, is, “A letter to the right hon. William Windham, on the defence of the country at the present crisis, by lieutenant-general Money.” He says, “I beg leave, sir, to submit to you, and to his majesty’s ministers, a measure, the adoption of which will, in the opinion of every military man I have conversed with on the subject, bid fair to put a stop to desertion.”—This measure, which, in the opinion of every military man, is likely to produce so desirable an effect, you will find to be neither more nor less than the measure which this defendant recommends, and has exerted himself to bring about—namely, the discontinuance of flogging. He goes on—“When a man deserts, and he is taken, he is liable to be shot: that, indeed, is seldom inflicted for the first offence, but he is punished in a manner that is not only a disgrace to a nation that boasts of its freedom and its humanity, but is an injury to the recruiting our army. It strikes such terror into the peasantry of the country. The culprit is tied up to the halberts, in the presence of the whole regiment, and receives six or eight hundred lashes, sometimes a thousand. He faints!—he recovers, and faints again!!—and some expire soon after the punishment! It wounds my feelings when I reflect on the dreadful sufferings of men I have seen and been obliged to see, thus cruelly punished; and what other epithet can be used than cruel? I have told men that I wished the sentence had been death; and true it is, that there are men who have preferred death to the disgrace and punishment.”

Gentlemen, I put to you these passages out of these different publications, published by these gallant and distinguished officers; and I ask you, whether you will send the defendant to a dungeon for doing that which has procured these officers the highest honours—the favour of their sovereign, and the approbation of the country?

I intreat you to reflect on the publication

which is charged in the indictment with being libellous; and which has been commented upon by the gentleman opposite me; and I beg you to recollect to mind the comments he has made upon it. He has told you it has a tendency, and must have been published with an intention, to excite mutiny and disaffection in our army, by drawing a contrast unfavourable to our service when compared with the French, and that it will induce the soldiers to join the standard of France and to rebel against their officers; and lastly, that it will prevent persons from entering into the service. Can sir Robert Wilson, gentlemen, can general Stewart, or can the gallant veteran officer, whose very expressions the writer has used—by any stretch of fancy, be conceived to have been actuated by such intentions? Were they such madmen as to have desired to alienate their men from their officers, and to disincline others from entering into the army of which they were commanders, and to which they were the firmest friends; to disincline men towards the defence of their own country, and lead them to wish for foreign and a French yoke? Can you stretch your fancy to the thought of imputing to them such motives as these? You see the opinions they have given to the world. With what arguments, and with what glowing—I will even say violent language—they have expressed themselves. And shall it be said, that this defendant, who uses language not so strong, has published a work which has that fatal tendency, or that he was actuated by so infernal an intention?—An intention, which, in these officers would argue downright madness—but an intention which in the author of this publication would show him fit only for the society of demons! Unless you are convinced, not only that what is innocent at Westminster is libellous here—but, that what is commendable in these officers is diabolical in the defendant—you cannot sentence him to a dungeon for doing that which has obtained the favour of the sovereign, and the gratitude of the country for these distinguished men.

I have heard so much about invidious topics, about dangerous subjects of discussion; I have seen so much twisting of expression to give them a tendency to produce disaffection, and I know not what besides, in the people of this country—that I am utterly at a loss to conceive any one subject—whether it be relative to military discipline or to civil polity—that is not liable to the same objection. I will put my defence on this ground. If any one of those subjects which are commonly discussed in this country, and particularly of those relative to the army, can be handled in a way to prevent expressions from being twisted by ingenuity, or conceived by some to have a tendency to produce discontent—if any mode of treating such subjects can be pointed out to me, in which we shall be safe, allowing the argument of my learned friend to be just, I will give up this case, and confess that the intention of the defendant was that which is im-



puted to him. Is there, to take an obvious instance, a subject more common-place than that of the miserable defect which now exists in the commissariat of our army? I only select this because it comes first to my thoughts. Has it not always happened that in the unfortunate necessity of a retreat, all mouths have resounded with the ill-conduct of the commissariat? Has it not been said in the hearing of the army and of the country, that the distresses of our troops on a retreat were increased by their want of food occasioned by the inadequacy of our commissariat? But we have not only been in the habit of blaming particular instances of neglect—we have also taken upon ourselves to blame the *system* itself. Nay, we have gone farther, we have placed our commissariat in comparison with that of France, and we have openly and loudly given the preference to the enemy. And why may not the defendant do the same with reference to another point of military discipline? Can you fancy a subject more dangerous, or which is more likely to occasion rebellion, than that of provision, if you tell the soldier that through the neglect of his government he runs the risk of being starved, while in the same breath you add that Buonaparte's troops are well supplied, through the attention which he pays to this most important branch of a general's duty? Yet, gentlemen, no one has ever been censured—nor has it been said that it was his intention to excite confusion—because he has condemned that part of our military system which relates to providing the soldiers with food.

In truth, we must submit to these discussions if we would have any discussion at all. Strong expressions may, indeed, be pointed out here and there in a publication on such topics and one may be more strong than another. When he is heated, a man will express himself strongly. And, am I to be told, that in discussing a subject which interests all men, no man is to express himself with force? Is it the inflammatory tendency of this publication, or is it, in one word, the eloquence with which the writer has treated his discussion that has excited the present prosecution? If he had treated his subject dully, coldly, stupidly, he might have gone on to the end of time, he would never have heard a breath of censure, seen a line of information, or produced an atom of effect. If warmth is not to be pardoned in discussing such topics, to what are the feelings of men to be confined?

I shall, perhaps, hear—confine yourselves to such subjects as do not affect the feelings—to matters that are indifferent alike to all men—go to arithmetic, take abstract points of law—"tear passion to tatters" upon questions in addition and subtraction—be as warm as you please on special pleading—there is a time sufficient for the workings of the heart—but beware of what interests all mankind, more especially your own countrymen; touch not the fate and fortune of the British army. Be-

were of those subjects which concern the men who advance but to cover themselves with victory, and who retire but to gain yet greater fame by their patient endurance; men who then return to their homes covered with laurels to receive the punishment of the lash which you inflict on the meanest and most unnatural of malefactors! Let us hear nothing of the "charnel houses" of the West Indies, as air Robert Wilson calls them, that yawn to receive the conquerors of Corunna! Beware of touching on these points; beware of every thing that would animate every heart; that would make the very stones re-echo your sound, and awaken stocks to listen to you. You must not treat such subjects at all; or else you must do it coolly, allowing yourselves to glow by some scale, of which my learned friend is no doubt in possession; you must keep to a line which is so fine that no eye but his can perceive it.

This may not be—this must not be!—While we continue to live in England it may not be—while we remain unsubdued by that egregious tyrant, who persecutes all freedom, with a rancour, which only oppressors can know—that tyrant against whom the distinguished officers whose works I have quoted have waged a noble and an efficient resistance—and against whom this defendant, in his humbler sphere, has been zealous in his opposition:—that tyrant whose last and most highly prized victory is that which he has gained over the liberty of discussion. Yes, gentlemen, while that tyrant enslaves his own subjects, and turns them loose to enslave others, no man under his sway dare attempt to do more than calmly and temperately to discuss his measures. Writers in his dominions must gauge their productions according to the standard established by my learned friend—they must measure their argument according to his rule—and regulate the warmth of their language to a certain defined temperature. When they treat of the tyrant's ambitious and oppressive policy—when they treat of the rigours of his military conscription, they must keep to the line which has this day been marked out in this court. Should they go beyond that line—should they engage in their subject with an honest zeal, and treat it with a force likely to gain conviction—that is to say, should they treat it after the manner of the writer of this composition which is now before you—they may lay their account with being dragged forth to be shot without a trial, like the unhappy bookseller of Nuremberg, or with being led in mockery to a court, and after the forms of a judicial investigation are gone through, consigned by the decision of the judges to years of imprisonment.

And yet, gentlemen, there is some excuse for Buonaparte, when he acts in this manner. His government, as he well knows, is bottomed in injustice and cruelty. If you search and lay bare its foundation, you must necessarily shake it to its centre—its safety consists in

silence and obscurity! Above all is it essential to its power that the cruelty of his military system should not be attacked, for on it does he rest his greatness. The writer, therefore, who should treat in a nervous style of the rigour of his conscription, could expect nothing but severe punishment.

But happily, gentlemen, things in this country are a little different. Our constitution is bottomed in law and in justice, and in the great and deep foundation of universal liberty! It may, therefore, claim inquiry. Our establishments thrive in open day—they even thrive surrounded and assailed by the clamour of faction. Our rulers may continue to discharge their several duties, and to regulate the affairs of the state, while their ears are dinned with tumult. They have nothing to fear from the inquiries of men. Let the public discuss, so much the better. Even uproar, gentlemen, is wholesome in England—while a whisper is fatal in France!

But you must take it with you, in deciding on the merits of this publication, that it is not upon our military system that the defendant has passed his reflections—it is not our military system that he condemns. His exertions are directed to remove a single flaw which exists on the surface of that system—a speck of rottenness which mars its beauty, and is destructive of its strength. Our military system he admires in common with us all, he animadverts upon a taint and not upon its essence—upon a blot which disfigures it, and not upon a part of its structure. He wishes you to remove an excrescence which may be pulled away without loosening the foundation, and the rest will appear the fairer, and remain so much sounder and safe.

You are now, gentlemen, to say by your verdict whether the mere reading of this publication—taking all its parts together—not casting aside its limitations and qualifications—but taking it as it appears in this paper—you are now to say, whether the mere perusal of it in this shape is likely to produce those effects which have been described by the counsel for the prosecution—effects which have never yet been produced by the infliction of the punishment itself. This consideration, gentlemen, seems to deserve your very particular attention. If you can say aye to this, you will then bring your verdict against the defendant—and not only against him, but against me, his advocate, who have spoken to you much more freely than he has done—and against those gallant officers who have so ably condemned the practice which he condemns—and against the country which loudly demands an attention to its best interests—and against the stability of the British Constitution!

Mr. Clarke replied for the prosecution:—“My lord, and gentlemen of the jury:—The circumstance which followed the conclusion of the speech which you have just heard is a strong proof of the evil tendency of that libel

which you are now inquiring into. What, gentlemen, in a court of justice, when questions of this sort are agitated, when we have had a violent and declamatory speech delivered to us, are persons to be stationed in the court, in order to express their approbation of it, and to bear down, if they can, the opinion of a jury? That this subject does stimulate the minds of the people, we have a strong proof in this fact. The gentleman who has been addressing you with so much eloquence, has declared that I have tortured the publication in order to answer the ends of the prosecution. If I have done so, why did he not produce the instances in which I have done it? You have had a strong evidence afforded you, that if my observations were capable of an answer, he was fully capable of giving it. Yet he has contented himself with stating that the grounds of my argument were ingenious, without, however, shewing how I tortured the passages of the publication. Instead of giving a fair and candid answer to what I objected, this defence is to be supported by general observations, which indeed have always been considered as a defence proper to be set up in these sorts of cases.—Professions that the party meant nothing more than to discuss the question in general, and that in so doing guilt cannot be attributed to him,—that he meant merely to discuss a question, which he, in common with all others, had a right to do.

Gentlemen, when a book, calculated to do infinite mischief to this country, was published, I mean “*The Rights of Man*,” the same kind of defence was offered; Locke and Sidney and other great writers were quoted in order to show that they had written on the subject, whether a republic were preferable to a monarchy, and it was stated, that the author of the *Rights of Man* had a right also to make that comparison, and that it was an infringement on liberty to prevent him from doing what others had done before him. The answer given upon that occasion was this. Yes, you may discuss that or any other question, but the matter of inquiry is, how are you to do it? If the method you adopt is likely to produce mischief, if you do it intemperately, it is proper that you should be stopped. This, gentlemen, is mere declamation, this pretence of the right of discussion is a mere cloak. And if the libel itself in question, is calculated to produce mischief, God forbid that any man should be allowed so to discuss the measures of government, and then come into court and say, I have a right to discuss, and I will do it, let what will happen. If this were the law of the land it could not long exist.

The learned counsel inferred, that because three general officers have written on this subject in distinct pamphlets, therefore the defendant has a right to do so in a public newspaper; careless of the consequences to the country, because he has read out of books that the army may be better regulated. I do not dispute the character of sir Robert Wilson,

whose eulogy has been so ably delivered, any of the other gentlemen whom he has mentioned; but we have hundreds and thousands of other officers besides them, equally skilful and honorable, who sit in courts martial, and superintend these punishments; and these officers are too frequently called upon to speak as to the propriety of them, for us to suppose that others know nothing about it except these three gentlemen. But what have they been doing? Writing books on the subject of military discipline in general, and recommending moderation in the regulation of military discipline.

But compare the case of these officers, with that of the defendant. These books do not get into every alehouse, and fall into the hands of the common soldiers; but this is the case with newspapers. They are liable to be read in every public-house, and by every set of men, and are usually written in such language that no one can say they have not a tendency to produce the effect charged in the indictment. These books carry the subject through, and show that where they thought a punishment necessary, the object was, that it should be administered in mercy. The learned counsel might, if he had pleased, have quoted to you another statement of sir Robert's respecting flogging. He might have urged strenuously upon you that he did approve of the flogging of two volunteers in the West of England, who came into the army of themselves, one of whom had struck his officer on the parade, and the other had assisted and approved it.—And this he deemed to be necessary in order to strike terror into the army. But, shall it be said, that this book of sir Robert Wilson's is liable to produce the mischief which a newspaper is liable to produce? Gentlemen, it is the abuse of this practice, of flogging, that is dangerous, it is not the thing itself. General Stewart recommends that flogging should be administered with mercy. Look at our officers, gentlemen, and see whether they are men likely to abuse their trust. It is necessary that some punishment should be inflicted, and until a better one be found, it is necessary to continue this. If shooting be better, then let it be employed; but the learned counsel acknowledges, that there are few who would not prefer flogging to shooting. For they who have the care of the army must take care that order is kept up in it.

The gentleman has thought proper to refer to the trial of the Hunts; but his ingenuity did not discover that whatever may have been the opinion of the jury that tried them, this is not the same case. The Hunts themselves may be produced as evidence against this defendant, for they left out a part of this libel, and the fact of their having culled it, evinces that what they omitted they deemed to be libellous, and therefore dangerous for them to use.

But, gentlemen, take the whole of this together. Suppose that it was right to acquit the defendant—without referring you to the opinion

of the learned judge, which you will hear by and by, call in the assistance of the whole piece, and from that form your opinion of the intention that the author has discovered. My learned friend has not done this; he has raised his defence upon general observations, upon reading extracts from books that were published by officers in the service, and upon the right of every one to discuss. Certainly, gentlemen, you may discuss freely, but you must not strike at the very root of society, at the very existence of your country. Can any one say that the defendant meant fair discussion? He has presumed what does not exist, that the soldier is cruelly treated, that he had lost the defence of his innocence, and would fly at the sound of the whip. Is not this touching him to the quick? Telling his enemy you ought to meet the English soldier with a whip in your hand, and he will fly at the very sight of it? If this is to be allowed, every one may libel the character of his neighbour, and may put all the violence into his libel that he pleases.—If he will confine himself to argument, he may argue either coolly or boldly—but in argument to say that our soldiers are treated cruelly, that they lose the protection of their innocence, and that they are ready to fly at the sound of the whip? It is necessary only to look at it and say, this is nothing like argument. Does it not strike at the very vitals of the country? Who is it that have defeated the brave troops of this country wherever they have met them? And who is it that will defeat them, unless they are corrupted by such miscreants as these? Where has this boasted French army, covered itself with glory when opposed to the British soldiers? And if we go on as we are, if we are not to be seduced, not to be seduced, by wifings like this, we shall still see this boasted French army, with all its French discipline, flying from the presence of our army. But, instead of meeting our soldiers with a bayonet, which cannot make them fear, this man meets them with a libel—he tells them that they are slaves, and to be met only with a whip.

Has he represented this Buonaparte as he ought to have represented him? Has he said any thing to do away the venom that he has instilled into a former part of the piece? See what he has written, and then judge whether he has said truth when he said he liked not Buonaparte? Had he said that he liked Buonaparte, the object of his writing would have been defeated. And, therefore, to impose upon the soldiery, he tells them, Buonaparte is no favourite of mine.

You must have perceived that the learned gentleman has appeared before you in the Court, in the character of his counsel, by stating to you his opinion of Buonaparte, in the hope that you would think that opinion is contained in the libel before you. But, whatever he may think of Buonaparte, that has nothing to do with the question at issue; whilst this character one of the vilest that ever was known, is held up in

an libel with no other observation but that he is no favourite of the publisher's, although he wears his soldiers better than we treat ours. What has the opinion of the learned counsel to do with the opinion of the newspaper writer? Gentlemen, the ground of your inquiry is, the nature of discussion: If it is to degenerate into abuse like this, if the existence of the country is to rest on such discussions as these, it is high time the world should be told, that these discussions must be put a stop to when they are conducted from a bad motive; for they must eventually lead to the destruction of the army. You know, gentlemen, the character of the army now. Wherever the officer goes the soldier will follow, and will never leave him. But can you expect that this will continue to be the case, if the soldier gets possession of principles like these? Against whom has Buonaparte succeeded with his army? Not against those that were supported by the liberties of the people, but against those that had no liberty to support them; and if you once convince the soldiery of this country that their liberties are lost, and that they are slaves, you pave the way for him to succeed against them also.

It is the ground of complaint with this kind of people, I cannot get my living without libelling, and it is hard that I cannot do as I please. In other countries, gentlemen, and in that most boasted country in which Buonaparte rules, there are licensers of the press, and nothing is suffered to appear in public but what they have approved and permitted to be published. What is meant by the liberty of the press there, is the liberty of publishing what these licensers will allow. But we are not reduced to that in England; not to any thing like it. Let a man publish what he please, but let him take care not to attack the constitution of his country—let him not be libellous. With the flaws of our constitution you may do what you please, under the sanction of the liberty of the press, but take care that you do not violate the laws as they are established.

Whoever reads newspapers may see that now nothing is concealed. The private secrets of families, which never ought to be retailed, are blazoned abroad, and many will buy the newspapers because they contain slander. Others look into them to see the government of their country abused, and the more intrepid the publisher is, the more sale is looked for of the paper. Under these circumstances it becomes important for justice to stand between the people and these persons, and to take care that the standards of the country are protected.

It is for you, gentlemen, now to say, by your verdict, whether we are to have a country, and a soldiery to defend it—whether they are to fight for us, and to love us—or whether they are to go over and join our mortal enemy.

#### SUMMING-UP.

Gentlemen of the Jury,—You have heard a

very eloquent and powerful Harangue in favour of the defendant. The learned counsel has done his duty to his client, and it is now your duty to do justice to your country by a sober, calm, and dispassionate review of all that has been said. It has been thought proper to bring to your notice a trial not exactly the same as this, in which the jury returned a verdict of acquittal; and to ask, “whether what was innocent at Westminster can be libellous here?” I would not speak disrespectfully of juries because they are most valuable in this country. But permit me to tell you; you are not bound by the verdict of another jury; you are as capable of judging of the merit of any case as a jury in Westminster; and therefore it is your duty to exercise your fair and proper judgment without regard to that trial. The learned counsel has also noticed the case of corporal Curtis, the first case mentioned in the publication, and has said, that the publisher has not stated what his offence was. He has told you the reason was, because he did not know what he had done. It is strange that he should publish the case without knowing the offence. I wish the learned counsel had stated to you what became of the motion concerning Curtis in the House of Commons, of which he is a member; for it appears to have been so groundless that there was not one in the House who supported it except the officer concerned in it. He courted the inquiry.

It is for you to inquire whether the paper has the tendency that is imputed to it. If it has, it is a libel. It has been attempted to be justified on the principles of the liberty of the press. I am sorry to say we live in an age when this liberty is grossly abused and when libelling is become a trade by which men gain their means of subsistence. With respect to free discussion it is competent to every Englishman freely to discuss, but at the same time he must do it decently and temperately; he must not mix up in that discussion violent inflammatory matter to injure the country, but must manage it in a spirit of calmness and candour, and without any malice. Examine the writing in question and see whether it will stand that test.

I have seen an instance to what extent the spirit of libelling can rise since I came into this town. It has been said that if the author or publisher can prove what he has stated to be true he ought not to be considered as guilty, and it is the same whether the subject be of a private or a public nature. But how would this free practice of libelling apply to a private case? When a man has been guilty of irregularity or of immorality, you have nothing to do but to bring it forth to public notice. You may make your observations upon it just as you please, in order that you may amuse and distress another. This, gentlemen, you see at once is a practice that cannot be allowed.

I shall not trouble you with a repetition of the charging parts of this paper. You have

heard very able comments made upon it by the counsel for the crown; and I entirely agree with him. The counsel for the defendant has contended that it is nothing more than free and fair discussion. And he has selected some few sentences in order to show that it was done with that design. No man publishes a libel but he takes care to publish something in it that will give him a chance of escaping. But that is a flimsy covering. We are engaged at this time with the most formidable foe of this country. Every body knows he is aiming at the downfall of the country; not only by open warfare, but also by means that operate in the very bosom of the country. It is the opinion of many, that the British press is one of the agents he uses in order to effect his purposes. It is to be feared, there are in this country many who are endeavouring to aid and assist him in his projects, by crying down the establishment of the country, and breeding hatred against the government. Whether that is the source from whence the paper in question springs, I cannot say, but I advise you to consider whether it has not that tendency. You will consider whether it contains a fair discussion—whether it has not a manifest tendency to create disaffection in the country and prevent men enlisting into the army—whether it does not tend to induce the soldier to desert from the service of his country. And what considerations can be more awful than these?

As to the question of flagellation I am not competent to judge upon it. It is the opinion of some great officers that it ought to be laid aside, and every person, as well as the learned counsel, who has any feeling, would wish to see it brought into disuse. If they be really his own opinions which he has been delivering, I wish he would make use of that eloquence of which he is so eminently possessed, in that House of which he is a member, and where he has the opportunity of seeing the evil redressed. And I hope we shall soon see him exercising those talents of which he has this day given us an example, by bringing the question into the place where it would be more in character than it is here. The House of Parliament is the proper place for the discussion of subjects of this nature; there it should appear, and not in pamphlets or newspapers combined with seditious and inflammatory matter.

It is said that we have a right to discuss the acts of our legislature. This would be a large permission indeed. Is there, gentlemen, to be a power in the people to counteract the acts of the parliament, and is the libeller to come and make the people dissatisfied with the government under which he lives? This is not to be permitted to any man,—it is unconstitutional and editious.

If you are of opinion that this publication tends to injure the military establishment of the country, you will pronounce it a libel, and you will find the defendant guilty. Since an

act was passed in the 32nd year of the present reign, to remove all doubts on the subject of libels, it has been usual, and indeed has been expected, of the judges who sit upon trials for libel, to give their opinions on the publications that are brought before them. We must conscientiously discharge our duty; and in the present case I have no difficulty in asserting of this publication, that it has a tendency to produce the mischief that is ascribed to it, and that it is a libel.

The Jury returned a verdict of GUILTY.

#### INDICTMENT to the foregoing Case.

[Of Michaelmas Term in the fifty-first year of King George the Third]

*Lincolnshire* } BE it remembered that sir Vicary  
(to wit.) { Gibbs knight attorney-general of our present sovereign lord the king who for our said lord the king in this behalf prosecuteth in his proper person cometh here into the court of our said lord the king before the king himself at Westminster in the county of Middlesex on Tuesday next after the morrow of All Souls in this same Term and for our said lord the king giveth the court here to understand and be informed that John Drakard late of Stamford in the county of Lincoln printer being a malicious seditious and ill-disposed person and unlawfully and maliciously devising and intending to injure the military service of our said lord the king and to insinuate and cause it to be believed that an improper and cruel method of punishment was practised in the army of our said lord the king and that persons belonging to the said army were punished according to such method with great and excessive severity and thereby to raise and excite discontent and disaffection in the minds of the persons belonging to the said army and to deter the other subjects of our said lord the king from entering into the same heretofore (to wit) on the twenty-fourth day of August in the fiftieth year of the reign of our present sovereign lord George the third by the grace of God of the united kingdom of Great Britain and Ireland king defender of the faith at Stamford in the county of Lincoln unlawfully and maliciously did compose print and publish and cause and procure to be composed printed and published a certain scandalous malicious and seditious libel of and concerning the military service of our said lord the king and of and concerning the supposed treatment of persons serving in and belonging to the army of our said lord the king and of and concerning the method of punishment practised in the army of our said lord the king which said scandalous malicious and seditious libel is according to the tenor and effect following (that is to say),—“One thousand lashes! The aggressors were not dealt with as Buona-  
‘parts would have treated his refractory troops.’ Speech of the Attorney-general; when demanding judgment on Mr. Cobbett, convicted of having published a libel.—Corporal Curtis was sentenced to receive one thousand lashes,

but, after receiving two hundred was, on his own petition, permitted to volunteer into a regiment on foreign service.—William Clifford, a private in the 7th royal veteran battalion," (meaning a certain battalion of and belonging to the army of our sovereign lord the king), "was lately sentenced to receive one thousand lashes, for repeatedly striking and kicking his superior officer. He underwent part of the sentence by receiving seven hundred and fifty lashes, at Canterbury, in presence of the whole garrison.—A garrison court-martial has been held on board the Metcalf transport, at Spithead, on some men of the 4th regiment of foot" (meaning a certain regiment of and belonging to the army of our said lord the king), "for disrespectful behaviour to their officers. Two thousand six hundred lashes were to be inflicted among them.—Robert Chillman, a private in the Bearstead and Malling regiment of local militia," (meaning a certain regiment of the local militia force of our said lord the king) "who was lately tried by a court martial for disobedience of orders, and mutinous and improper behaviour while the regiment was embodied, has been found guilty of all the charges, and sentenced to receive eight hundred lashes, which are to be inflicted on him at Chatham, to which garrison he is to be marched for that purpose.—London Newspapers. The attorney-general said what was very true; these aggressors have certainly not been dealt with as Buonaparte would have treated his refractory troops; nor, indeed, as refractory troops would be treated in any civilized country whatever, save and except only this country. Here alone, in this land of liberty, in this age of refinement, by a people who, with their usual consistency, have been in the habit of reproaching their neighbours with the cruelty of their punishments, is still inflicted a species of torture, at least as exquisite as any that was ever devised by the infernal ingenuity of the Inquisition. No, as the attorney-general justly says, Buonaparte does not treat his refractory troops in this manner; there is not a man in his ranks whose back is seamed with the lacerating cat-o'-nine-tails; his soldiers have never yet been drawn up to view one of their comrades, stripped naked—his limbs tied with ropes to a triangular machine—his back torn to the bone by the merciless cutting whip-cord, applied by persons who relieve each other at short intervals, that they may bring the full, unexhausted strength of a man to the work of scourging. Buonaparte's soldiers have never yet with tingling ears listened to the piercing screams of a human creature so tortured:—they have never seen the blood oozing from his rent flesh; they have never beheld a surgeon, with dubious look, pressing the agonized victim's pulse, and calmly calculating, to an odd blow, how far suffering may be extended, until, in its extremity, it encroach upon life. In short, Buonaparte's soldiers cannot form any notion

of that most heart-rending of all exhibitions on this side hell—an English military flogging. Let it not be supposed, that we intend these remarks to excite a vague and indiscriminating sentiment against punishment by military law:—No, when it is considered that discipline forms the soul of an army, without which it would at once degenerate into a mob—when the description of persons which compose the body of what is called an army, and the situations in which it is frequently placed, are also taken into account, it will, we are afraid, appear but too evident, that the military code must still be kept distinct from the civil, and distinguished by greater promptitude and severity. This necessity is of itself mortifying enough; and becomes more bitter, when it is recollected, that there is not an individual in the middle classes, unless incapacitated by age or infirmity, who may not contemplate, as a very probable contingency, his being dragged from the protection of what he has been in the habit of calling the bulwarks of British liberty, deprived of that security in which innocence may confide, a trial by jury. Bereaved of every benefit arising from the cautious formalities of our law, and the lenient interpretations of its ministers, in short, cast at once out of the pale of that constitution in which he has been exulting, and teaching his children to exult, and exposed to the summary judgment and rigid execution of a tribunal of soldiers, all this may happen (we might say has happened), and that without any fault committed by the person so deprived of his immunities; in case of an invasion—or a necessity arising for any great military exertion it would undoubtedly happen to almost every individual of our readers. It has already taken place with those whom poverty had incapacitated to procure exemption. Robert Chillman, for instance, the poor private of the Bearstead and Malling regiment of local militia, who is to receive eight hundred lashes on his naked back, was probably an honest, industrious labourer. He had, most likely, heard from the parson of his parish (especially if he happened to be a political one), that he lived in a land of freedom, in a land where there was but one law for the prince and the peasant, where no man could be punished unless he had been adjudged guilty by twelve of his equals, where every man was free to act as he pleased, provided he did nothing wrong. While congratulating himself on his good luck in being born in so happy a country, our labourer is waited upon by the constable, who acquaints him that he is drawn, and must go for a soldier. It is of no use to object that he does not like being a soldier; that he had rather go a haymaking or to drive his team: he is told that he must be a soldier, and that if he does not make his appearance on a certain day, at a certain place, he will be advertised as a deserter, and a warrant will be issued for his apprehension. This is strange news for our labourer to hear in the

land of freedom: but, as there is no answering the constable's arguments, he attends, is enrolled, harnessed, and drilled. Meeting with several of his former associates, similarly situated with himself, it is not a matter for surprise if our labourer, turned soldier, should some evening, after a hard day's exercise, indulge a little beyond the limits of sobriety; and when an Englishman is tipsy he claims it as one of his privileges to be saucy. Only ten days ago, Robert Chilman might have got as drunk as he pleased; aye, and been saucy too in his cups, and no one would have thought of punishing him, unless he was very riotous indeed, and then, perhaps, he might have to sit in the stocks for an hour. But ten days have produced a wonderful change in his condition. What is only an indiscretion in a labourer, is a most atrocious offence, meriting the infliction of torture, when committed by a soldier; and our labourer has, some how or other, been metamorphosed into a soldier, although certainly not by any act of his own, nor even with his consent. When in a state of intoxication, he chances to meet one of his officers: the last time he saw this officer was probably at the back of a shop counter in his own village, when that hand, which now wields a sword, flourished with much dignity an ell measure. To be sure it is the duty of a soldier to behave towards his officers with humble submission, but our soldier, his senses being at the time not the most clear, is totally blind to the officer, and can only see the village shop-keeper. The consequence is, that he transgresses not the civil law of the land, which he was brought up to respect, but military discipline, of which until within these ten days he knew nothing: for this transgression he is tried, not by his equals, but by his superiors, by the very parties whom he has offended. And our free-born Englishman is fastened with ropes to the stake, his naked flesh is cut open with whip-cord, and amidst his howlings you may hear him imprecating curses on the person who had prayed to him about liberty and equal rights. We have traced this description, not as the real case of Robert Chilman, of whom and of whose offence we know nothing, but as a statement of the probable effects of the present system. It must be evident to the most common observer, that what we have stated, not only might occur, but that it is very likely to occur. We would not deduce from it a general condemnation of compulsory measures to raise a military force (nor indeed a condemnation of the plan pursued by our rulers), nor, we are very sensible that they are often absolutely necessary; but as they involve, at least, an apparent violation of the freedom of the subject, we would recommend to the attorney-general a tone less akin to the triumphant, when he next refers to the manner in which Buonaparte treats his soldiers. Buonaparte is no favourite of ours; God wot—but if we come to balance accounts with him on this particular head, let us see how matters will stand. He recruits

his ranks by force—so do we. We flog those whom we have forced—he does not. It may be said he punishes them in some manner; that is very true. He imprisons his refractory troops—occasionally in chains—and, in aggravated cases, he puts them to death. But any of these severities is preferable to tying a human creature up like a dog, and cutting his flesh to pieces with whip-cord. Who would not go to prison for two years, or indeed for almost any term, rather than bear the exquisite, the almost insupportable torment occasioned by the infliction of seven hundred or a thousand lashes? Death is mercy compared with such suffering. Besides, what is a man good for after he has had the cat-o'-nine-tails across his back? Can he ever again hold up his head among his fellows? One of the poor wretches executed at Lincoln last Friday, it is stated had been severely punished in some regiment (meaning some regiment of and belonging to the army of our said lord the king), "The probability is, that to this odious, ignominious flogging, may be traced his sad end; and it cannot be doubted that he found the gallows less cruel than the halibuts. Surely, then, the attorney-general ought not to stroke his chin with such complacency, when he refers to the manner in which Buonaparte treats his soldiers. We despise and detest those who would tell us that there is as much liberty now enjoyed in France as there is left in this country. We give all credit to the wishes of some of our great men; yet while any thing remains to us in the shape of free discussion, it is impossible that we should sink into the abject slavery in which the French people are plunged. But although we do not envy the general condition of Buonaparte's subjects, we really (and we speak the honest conviction of our hearts) see nothing peculiarly pitiable in the lot of his soldiers when compared with that of our own. Were we called upon to make our election between the services, the whip-cord would at once decide us. No advantage whatever can compensate for, or render tolerable to a mind but one degree removed from brutality, a liability to be lashed like a beast. It is idle to talk about rendering the situation of a British soldier pleasant to himself, or desirable, far less honourable, in the estimation of others; while the whip is held over his head—and over his head alone, for in no country in Europe (with the exception perhaps, of Russia, which is yet in a state of barbarity) is the military character so degraded. We have heard of an army of slaves, which had bravely withstood the swords of their masters, being defeated and dispersed by the bare shaking of the instrument of flagellation in their faces. This brought so forcibly to their minds their former state of servitude and disgrace, that every honourable impulse at once forsook their bosoms, and they betook themselves to flight and to howling. We entertain no anxiety about the character of our

countrymen in Portugal," (meaning persons serving in and belonging to the army of our said lord the king in Portugal) "when we contemplate their meeting the bayonets of Massena's troops—but we must own we should tremble for the result, were the French general to dispatch against them a few hundred drummers, each brandishing a cat-o'-nine-tails"—In contempt of our said lord the king and his laws to the evil example of all others and against the peace of our said lord the king his crown and dignity *Second Count.*—And the said attorney-general of our said lord the king for our said lord the king giveth the court here further to understand and be informed that the said John Drakard so being such person as aforesaid and again unlawfully and maliciously devising and intending as aforesaid afterwards to wit on the twenty-fourth day of August in the fiftieth year of the reign aforesaid at Stamford in the county of Lincoln unlawfully and maliciously did print and publish and cause and procure to be printed and published a certain other scandalous and malicious libel of and concerning the military service of our said lord the king and of and concerning the supposed treatment of persons serving in and belonging to the army of our said lord the king and of and concerning the method of punishment practised in the army of our said lord the king containing therein amongst other things certain scandalous malicious and seditious matters and things according to the tenor and effect following (that is to say) "One thousand lashes! 'The aggressors were not dealt with as Buonaparte would have treated his refractory troops.'—Speech of the attorney-general, when demanding judgment on Mr. Cobbett, convicted of having published a libel.—Corporal Curtis was sentenced to receive one thousand lashes, but after receiving two hundred, was, on his own petition, permitted to volunteer into a regiment on foreign service. William Clifford, a private in the 7th royal veteran battalion," (meaning a certain battalion of and belonging to the army of our said lord the king) "was lately sentenced to receive one thousand lashes for repeatedly striking and kicking his superior officer. He underwent part of the sentence, by receiving seven hundred and fifty lashes, at Canterbury, in presence of the whole garrison.—A garrison court-martial has been held on board the Meicall transport, at Spithead, on some men of the fourth regiment of foot" (meaning a certain regiment of and belonging to the army of our said lord the king) "for disrespectful behaviour to their officers. Two thousand six hundred lashes were to be inflicted, among them.—Robert Chilman, a private in the Beerstead and Malling regiment of local militia," (meaning a certain regiment of the local militia force of our said lord the king) "who was lately tried by a court martial for disobedience of orders and mutinous and improper behaviour while the regiment was embodied, has been found guilty of all the charges, and sentenced to receive eight hun-

dred lashes, which are to be inflicted on him at Chatham, to which garrison he is to be marched for that purpose.—London Newspapers. The attorney-general said what was very true; these aggressors have certainly not been dealt with as Buonaparte would have treated his refractory troops; nor, indeed, as refractory troops would be treated in any civilized country whatever, save and except only this country. Here alone, in this land of liberty, in this age of refinement, by a people who with their usual consistency, have been in the habit of reproaching their neighbours with the cruelty of their punishments, is still inflicted a species of torture, at least as exquisite as any that was ever devised by the infernal ingenuity of the Inquisition. No, as the attorney-general justly says, Buonaparte does not treat his refractory troops in this manner; there is not a man in his ranks whose back is seamed with the lacerating cat-o'-nine-tails; his soldiers have never yet been drawn up to view one of their comrades stripped naked, his limbs tied with ropes to a triangular machine—his back torn to the bone by the merciless cutting whip-cord, applied by persons who relieve each other at short intervals, that they may bring the full unexhausted strength of a man to the work of scourging." In contempt of our said lord the king and his laws to the evil example of all others and against the peace of our said lord the king his crown and dignity. *Third Count.*—And the said attorney-general of our said lord the king for our said lord the king giveth the court here further to understand and be informed that the said John Drakard so being such person as aforesaid and again unlawfully and maliciously devising and intending as aforesaid afterwards to wit on the twenty-fourth day of August in the fiftieth year of the reign aforesaid at Stamford in the county of Lincoln unlawfully and maliciously did print and publish and cause and procure to be printed and published a certain other scandalous and malicious libel of and concerning the military service of our said lord the king and of and concerning the supposed treatment of persons serving in and belonging to the army of our said lord the king and of and concerning the method of punishment practised in the army of our said lord the king containing therein amongst other things certain scandalous malicious and seditious matters and things according to the tenor and effect following (that is to say, "It is idle to talk about rendering the situation of a British soldier pleasant to himself or desirable, far less honourable, in the estimation of others, while the whip is held over his head—and over his head alone; for in no country in Europe (with the exception perhaps of Russia, which is yet in a state of barbarity), is the military character so degraded. We have heard of an army of slaves, which had bravely withstood the swords of their masters, being defeated and dispersed by the bare shaking of the instrument of flagellation in their faces. This brought so forcibly to their minds their



former state of servitude and disgrace, that every honourable impulse at once forsook their bosoms, and they betook themselves to flight and to howling. We entertain no anxiety about the character of our countrymen in Portugal" (meaning persons serving in and belonging to the army of our said lord the king in Portugal) "when we contemplate their meeting the bayonets of Massena's troops—but we must own that we should tremble for the result, were the French general to dispatch against them a few hundred drummers, each brandishing a cat-o'-nine-tails."—In contempt of our said

lord the king and his laws to the evil example of all others and against the peace of our said lord the king his crown and dignity whereupon the said attorney-general of our said lord the king who for our said lord the king in this behalf prosecuteth for our said lord the king prayeth the consideration of the Court here in the premises and that due process of law may be awarded against him the said John Drakard in this behalf to make him answer to our said lord the king touching and concerning the premises aforesaid.

688. The whole Proceedings, before the Court of King's Bench in Ireland, in the Cases of EDWARD SHERIDAN, M. D. and THOMAS KIRWAN, Merchant, for Misdemeanors, charged to be committed in violation of the Stat. 33 Geo. III. c. 29. commonly called the Irish Convention Act,\* Nov. 6—Feb. 6: 52 GEORGE III. A. D. 1811, 1812.†

*Counsel for the Prosecution.*

Mr. Attorney General [the Right Hon. W. Saurin];  
Mr. Solicitor General [C. K. Bushe, afterwards Lord Chief Justice of the King's Bench];  
Mr. Sergeant Moore,  
Mr. Sergeant Ball,  
Mr. Sergeant Mac Mahon [afterwards Master of the Rolls];  
Mr. Jebb, Mr. Ridgeway,  
Mr. Joy, Mr. Kemmis.  
Mr. Townsend,

*Agents.*

Messrs. Thomas and William Kemmis.

*Counsel for the Traversers.*

Mr. Burrowes, Mr. Gould,  
Mr. Burne, Mr. Burton,  
Mr. Johnson [afterwards a Judge of the Common Pleas];  
Mr. Driscoll, Mr. Ferrall,  
Mr. MacNally, Mr. Mac Kane,  
Mr. Wallace, Mr. Perrin,  
Mr. Bellew, Mr. Finley,  
Mr. Rice, Mr. North,  
Mr. O'Connell, Mr. Grattan.  
Mr. Macklin,

*Agent.*

Mr. Edward O'Collaghan.

\* From the short-hand Report of William Ridgeway, esq. barrister at law, and one of the counsel for the prosecution.

† As to the Irish Convention Act, see 19 Hans. Parl. Deb. pp. 1, 18, 269, 693; 20 Hans. Parl. Deb. 570; 21 Hans. Parl. Deb. 408, 494, 605.

COURT OF KING'S-BENCH.

Wednesday, 6th November, 1811.

IN the month of August last, several gentlemen were arrested in the city of Dublin, under, and by virtue of warrants issued by the right hon. Lord Chief Justice Downes, upon a charge of attending a parish meeting and acting in the appointment of Representatives, to represent the Roman Catholics of Ireland, for the purpose, or under pretence, of preparing petitions to both Houses of Parliament, for the repeal of the laws in force in Ireland particularly affecting the Roman Catholics, contrary to the provisions of the act 33 Geo. 3, chap. 29, called the Convention act. The persons arrested entered into bail to appear in the King's-Bench, and this being the first day of the Term, as soon as the Court sat, the following proceedings took place.

Mr. Gould stated, that he was concerned as counsel for several of the gentlemen who had been arrested, and was instructed by one of them, Mr. Thomas Kirwan, to apply to the Court for a copy of the informations sworn against him. It had been the constant practice, in cases of misdemeanor to give the traverser a copy of the informations.—He was aware that in cases of felony the practice was different. But, through all his experience, he had never known such an application as the present refused in a case of misdemeanor. An application had been made to the officer, who thought proper to refuse, and therefore an application to the Court became necessary.

The Court, after conferring, required that some case should be cited, in which such a motion had been granted, which not being done, they declared, that there did not appear to be any distinction, in this respect, between felonies and misdemeanors: The evidence for the prosecution was never disclosed before trial, and they could not make a precedent, by yielding to the application.

The Grand Jury panel having been called over, Nathaniel Hone, alderman, appeared as foreman; and upon the deputy clerk of the Crown handing him the book to be sworn,

Mr. *Goold*.—My lords, I am counsel for Mr. Thomas Kirwan, and others, who are bound by recognizance to attend this Court. The only document, with which they have been furnished, is a copy of the warrant issued against them, from which it appears, that the offence charged is a misdemeanor. I did apply for a copy of the information upon which the warrant was granted, the clerk of the Crown having refused it, and which I had heretofore considered as the uniform right of the subject. I now desire to know, whether it is intended to prefer an indictment against those who have been arrested?

The Crown Solicitor answered, that the intention was, to proceed by indictment.

Mr. *Goold*.—Then, my lords, I may now repeat my application on behalf of the traverser, for a copy of the information against him.

Mr. *Solicitor General*.—My lords, this application comes upon us by surprise. The person for whom Mr. *Goold* appears, is called a traverser, but against whom no indictment has been yet sent up.

The grand jury will exercise their discretion, whether to find the indictment a true bill upon the informations which will be sent up to them, or upon the examination of witnesses. We cannot say what may be the foundation of their decision.

Mr. *Justice Daly*.—I have inquired of a very experienced officer, and he states, that he has sometimes given copies of informations in trivial cases, and that in cases of difficulty, he applied to the judges for their permission, which tends to show that it is not a matter of right.

Mr. *Goold*.—Uniform practice is the best evidence of right, and upon that ground we did make, and repeat the application, for a copy of the informations. Now, my lords, understanding that the Crown will proceed by indictment, I think it my duty to take exceptions to certain members of the grand jury.

Lord Chief Justice *Downes*.—Does the Crown consent.

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Mr. *Solicitor General*.—Certainly not, my lord.

Lord Chief Justice *Downes*.—Then we may dispose of the objection. I have never known an instance of it.

Mr. *North*.—My lord, one objection which we make to the grand juror is, that he is returned at the instance of the prosecutor, and we cannot state that as a cause of challenge, until we know who he is.

Mr. *Goold*.—My lords, our objection to alderman Hone is, an objection to the favour. Our challenge is this: "And the said Thomas Kirwan, by S. Kildahl, his attorney, comes and says, that Nathaniel Hone, returned upon the panel, stands not indifferent, but is favourable to the prosecutor."—How can I state that without knowing who the prosecutor is? But the evidence which I propose to offer is, that he holds an office under the Crown, removable at pleasure, and therefore in a case between the Crown and the subject, such a person ought not to be sworn on the grand jury.

Mr. *Solicitor General*.—My lords, in the absence of the attorney-general, who is indisposed, and there being no notice of such a proceeding, we require the Court to decide upon the propriety of suffering this challenge to appear upon the record. The person on whose behalf it is made, is not called upon; when he is called upon, he may make every objection which the law allows him.

Mr. *Justice Osborne*.—But if the Court be informed in any way of the disqualification of a grand juror, is it not their duty to set him aside?

Mr. *Justice Day*.—It is the right of a person accused, to challenge a grand juror.

Mr. *Barrowes*.—My lords, I am not counsel for the particular gentleman, whose name has been mentioned; but I am counsel for others who are involved in the same accusation; and therefore I think it necessary to say something upon this objection, as the rule which shall be now pronounced, may govern the other cases. My lords, to deny the right of a person accused to challenge a grand juror, will extend the prerogative of the Crown beyond any thing which has yet been known: as to the period of time when, according to the forms of proceeding, the challenge ought to be made, it appears quite decided, that the party may make it when the grand jury is called.

Mr. *Justice Daly*.—I do not apprehend that such a point has been decided.

Mr. *Goold*.—Do the crown lawyers say, whether they will demur, or join issue in fact.

Mr. *Solicitor General*.—My lords, with great respect, we say, that the Court will not call upon the Crown to join issue, or demur. We

submit, that the challenge is inadmissible; it is undoubtedly informal, and must be amended: it states, that the party on whose behalf it is offered, "comes by his attorney."—What right has he to appear by attorney? How does it appear that he is the same man, against whom the informations now lying in the Crown-office were sworn? It begins with the copulative "And"—with what is that to be connected?

*Mr. M'Nally.*—The identity is admitted by the acknowledgment that he is to be proceeded against by indictment. But I think the previous motion should be, that all the parties should be discharged from their recognizances.

*Lord Chief Justice Downes.*—That would be altogether premature.

*Mr. Gould.*—My lords, we have amended the challenge:—"The said Thomas Kirwan, bound by recognizance to appear on the 6th of November, in his proper person comes and says, that Nathaniel Hone stands not indifferent, as he stands unsworn, but is favourable to the Crown."

*Mr. Solicitor General.*—My lords, we submit that the judgment of the Court should be taken, whether the Crown ought to be put to answer this challenge, and whether it should be permitted to remain upon the record? The nature of the duty of the Grand Jury shows the impropriety of this proceeding. They are to enquire, generally, of offences committed in the county. They are not to decide between particular individuals; it is an ex-parte proceeding; before them the accused is never heard; none but the accuser and his witnesses are allowed to appear; and the Grand Jury find, whether there be probable cause for prosecution. That is decisive to show, that a person not in custody, is not entitled to object, although he states, that he is bound by recognizance to attend—a recognizance upon which he has not been called, and never may be called. Because he has a contingent chance of being prosecuted; has he therefore a right to challenge the Grand Jury? If this be a ground of objection, it should be urged as a plea in abatement of the indictment, when the party is called to answer the accusation upon record; and it is contrary to the practice of all criminal courts, to permit a man, who may, or may not be prosecuted, to challenge a grand juror.

As to the allegation of a grand juror being favourable or unfavourable, it is not easy to reconcile the passage in Hawkins, with the general practice. Want of freehold in a grand juror is every day a ground of pleading in abatement, and then an issue may be joined between the Crown and the subject. But shall a man not in custody, and, for aught appears, not accused, stand up in court and challenge a grand juror? This challenge

begins, "And the said Thomas Kirwan, &c." who is he?

*Mr. Justice Day.*—The man whom you have in custody under your warrant.

*Mr. Solicitor General.*—He is not in actual custody—his identity might then be admitted; the challenge offered, states, that the party offering it, is bound by recognizance to appear. But how is he known to be the same man?—We do not consent to this challenge being received.

*Mr. Burrows.*—My lord, the challenge is offered at the only time when it could be offered.

*Mr. Justice Day.*—Every man apprised of a charge against him, is interested in having a pure grand jury to decide upon the accusation, as much as a petit jury.

*Mr. Burrows.*—My lord, it cannot be denied, for it is an established principle, that no man can be convicted, but upon the concurrence of two juries. It is not, therefore, a matter of indifference who the Grand Jury are. We are not put to the necessity of arguing that; but there is some objection made as to the time at which we urge it.

My lords, the counsel for the Crown would deride us, if their politeness did not prevent them, for letting the opportunity slip. Would it not follow, if their argument be true, that the sheriff might impanel twelve scullions from the castle without the possibility of the prisoner objecting to any of them?

*Mr. Solicitor General.*—My lords, I believe it is not peremptory upon the Court, that the Grand Jury should be sworn this day, and therefore, if your lordships will adjourn the swearing of them until to-morrow, I will take the opportunity of conferring with the attorney-general.

*Lord Chief Justice.*—I see no objection.

*Thursday, 7th November, 1811.*

*Mr. Gould.*—My lords, I shall now take the liberty of tendering the challenge which was made yesterday, in a more formal manner, and engrossed on parchment: it is as follows:

"Thomas Kirwan, bound by his recognizance to appear on Wednesday the 6th of November, 1811, before our sovereign lord the king, in his court of King's-bench at Dublin, to answer such matters as shall be then and there alleged against him, comes in his proper person, and says, that Nathaniel Hone, one of the Jurors returned upon the panel of the grand inquest of the county of the city of Dublin for the present Michaelmas term, stands not indifferent, as he stands unsworn, but is unduly favourable to our sovereign lord the king, in this, that at the time of the arraying of the panel aforesaid, the said Nathaniel Hone held, and ever since hath held, and still doth hold

"an office of great emolument, to wit, the office of one of the divisional magistrates of police in and for the county of the city of Dublin, removeable at the will and pleasure of our sovereign lord the king, and this he is ready to verify."

*Mr. Solicitor General.*—My lords, we wish to have the judgment of the Court, whether we are called upon to give any answer to this challenge, or whether the Court will not quash it, as a perfectly irregular and illegal proceeding.

The impression made upon my mind yesterday, on the first mention of this very novel and extraordinary experiment, has not been altered by the opportunity which I have since had of conferring with the attorney-general; and of farther considering the subject. I apprehend, that, in the first instance, I cannot do better, than call upon the gentlemen on the other side to produce a single example of a challenge to a grand juror being received upon his coming to the book. I have not seen any authority to that effect, and I have consulted such books as the shortness of the time would admit. My lords, if there be uniform practice against, and a total want of precedent for, such a proceeding, I am not only warranted in opposing the experiment, but I should be guilty of a dereliction of my duty, if I did not take the opinion of the Court upon it.

My lords, see, what, in point of principle, this challenge is. It is a challenge which any man may make at any assizes, who is accused of any crime whatever, even although he be not called up for trial; although he be not in custody, and although no proceedings have been taken to make him amenable! My lords, it would go to this, that every prisoner confined in the gaol of a county, and every man bound by a recognizance to attend the assizes, has a right to come into Court on the first day of the assizes and object to the swearing of the grand jury. There is no known instance of such a proceeding. But, although I confess, that if the practice be supported by authority or by principle, the want of an instance is no objection to the proceeding; yet the uniformity of practice is deserving of much attention. Have your lordships ever known an instance, in the course of your experience, of a grand jury being sworn in the presence of the prisoners? Has the sheriff ever been called upon to produce his prisoners before bills of indictment have been found? Has the Clerk of the Crown ever called upon the prisoners or persons out upon bail to look to their challenges, for that the grand jury were about to be sworn?

My lords, I have looked through the elementary books, which have treated of juries, and I could find nothing to sanction the objection. I have looked into "*The Complete Jurymen*," which is a book of some authority upon this subject, and I do not find a trace of such a proceeding. The only book in which

any thing like an authority is to be found, is that cited yesterday "*Bacon's Abridgment*," in which there is only a vague dictum, and it refers to 2 Hawk. Pl. Cor. ch. 25. s. 16. In this chapter, treating upon indictments, is this passage: "As to the first particular" (meaning who may be, and ought to be indictors) "it seems clear, that every indictment must be found by twelve men at the least, every one of which ought to be of the same county, and returned by the sheriff or other proper officer, without the nomination of any other person whatsoever; and ought also to be a freeman, and a lawful liege subject, and consequently neither under an attainder of any treason or felony, nor a villein, nor alien, nor outlawed, whether for a criminal matter, or as some say, in a personal action. And from hence it seems clear, that if it appear by the caption of an indictment, or otherwise, that it was found by less than twelve, the proceedings upon it will be erroneous. Also, it seems, that any one who is under a prosecution for any crime whatsoever, may, by the common law, before he is indicted, challenge any of the persons returned on the grand jury; as being outlawed for felony, &c. or villeins, or returned at the instance of a prosecutor, or not returned by the proper officer, &c." This is the only dictum, and vague as it is, the compiler of *Bacon's Abridgment* echoes it, 3 Bac. Abr. tit. Juries, and states, "that the exception should be taken before indictment found." There is no other authority.

*Mr. M'Nally.*—There is, in 2 Hal. P. C. 126 and 255, where it is said, that the statute extends to the panel of the grand inquest. This is not an echo from Hawkins, and I can also refer to a more recent case.

*Mr. Solicitor General.*—My lords, it is quite impossible for Mr. M'Nally and me to argue this subject at the same time.

*Mr. M'Nally.*—I shall not give you any further information upon crown law, or interrupt you again, until you have finished.

*Mr. Solicitor General.*—I was proceeding to state what is to be found in Sergeant Hawkins's Pleas of the Crown. I am perfectly aware of the passages in Hale, which apply to pleas in abatement and not to challenge.

Sergeant Hawkins is stating the consequence of a defect in a grand juror appearing on the record. In the margin, there are references to authorities, and if he did not refer to some, it would be his mere dictum. He begins the paragraph by saying, "it seems clear, that if it appear by the caption of an indictment or otherwise, that it was found by less than twelve men, the proceedings will be erroneous."—Also, it seems (varying the phrase from it seems clear) "that any one who is under prosecution, may, by the common law, before he is indicted, challenge any of the persons returned on the grand jury, &c." In the margin, the stat. 11 Hen. 4. c. 9. is referred

to, as is also a case in Cro. Car. 134, as an authority, to prove that a challenge to a grand juror lies as a common law right, before he is sworn. But so far from its being a common law right, the statute recites the disqualifications and enacts that the indictment found by a juror so disqualified shall be void; but there is not to be found in it, a single word about challenging a juror, before he has found an indictment. The case referred to upon the subject, is sir William Whithipole's case,\* and so far from being an authority to show that a grand juror can be challenged when he comes to the book, the case referred to, is the case of a prisoner pleading in abatement, after indictment found.

The case was this—"Sir William Whithipole being indicted before the coroners for the murder of Madyson, and being arraigned upon that inquest, informed the Court, that he had matter in law to plead to avoid the indictment."—Every word showing, as we proceed, that the objection was urged after the indictment was found, and not before the grand jury was sworn. "Counsel being assigned, put in a plea for him, that he ought not to be impeached upon this indictment; for he showed in his plea the statute of 11 Hen. 4, c. 9.—'That none shall be put upon any panel of inquest at the denomination of any person, unless by the bailiffs and ministers of the sheriffs sworn and known; and that the said jurors should be *probi et legales homines*,' and further pleads, that the foreman nominated himself to be of the jury, and that two of the jurors were OUTLAWED, and for this plea pleaded, the Court would advise, whether it should be accepted? And what should be done thereupon, either demur or join issue? The first question was, whether the 11 Hen. 4, c. 9, extends to inquests before coroners, or only to indictments before justices of the peace, and of *oyer* and *terminer*."

Mr. Justice Daly.—The question there was, whether the statute applied to a coroner's jury, but no doubt was entertained, that it was applicable to other juries.

Mr. Solicitor General.—The determination of the judges in the case cited, was, that "the statute 11 Hen. 4, c. 9, extends to all inquests before the coroners," as well as to other indictments, manifestly showing that the objection cannot be made before; and I am warranted by this examination of these authorities to observe, that Mr. Sergeant Hawkins's book is more respectable, where he states legal principles, supported by adjudications, than where he indulges in conjectures, and qualifies his positions by saying that "*it seems*," and some other authorities which are given in the margin, upon this passage, furnish proof of the truth of this remark.

The Year Book, 21 Hen. 6, c. 30, is cited,

\* Cro. Car. 134,

and upon looking into it, your lordships will find, that the case reported was an action of debt in which a question was made as to the return by the sheriffs, of a jury, and in the course of the argument a *dictum* is uttered, that an outlaw shall not be a juror. I have looked into Bro. tit. Cor. and Indictment also stated in the margin, and have found nothing in either upon the subject, so that it rests upon the position in Hawkins, which is not made better by being repeated in Bacon's Abridgment.

It is a mistake to suppose that the doctrine for which I contend would deprive an accused person of the right to object to the grand jury who find bills against him. Such a right is unquestionable. I only object to the manner of exercising it, and say that it cannot be by challenge; that is the proper mode of objection to a petit juror, but the objection to a grand juror must be by plea in abatement. The very case of sir William Whithipole referred to by Hawkins demonstrated that—his plea of abatement could not have been entertained if he had had a right to challenge, for to such a plea it is always an answer, that the pleader comes too late, if he has not availed himself of the objection at the earliest moment.

So far I have merely considered the authority of the *dictum* in Hawkins: but, independent of this, the *argumentum ab inconvenienti* is very serious.

Your lordships are not much troubled with indictments found by grand juries in term time: but on the different circuits, there is much criminal business, and I cannot conceive, that there could be a more complete obstruction to public justice than that which must arise, if every accused person, from the crime of high treason down to petty larceny, should have a right to challenge a grand juror, about to be sworn, not upon his own case only, but upon the case of every man to be accused at the same assizes, of any crime committed previously. At the time when the grand jury is swearing, it is not clear, that the informations, which are sworn against any particular man will be proceeded on, nor is it known what the Court may do with them—whether they will be sent to the sessions, or whether the person charged will be called upon at all.

When the grand jury is about to be sworn, it is not known what will be given them to inquire into, or who will be brought before them. Some persons are in custody, others are out upon bail, others have not as yet been accused at all, and their accuser may for the first time appear in the Crown-office or before the grand jury, after the grand jury shall have been sworn. Is it contended that every prisoner and every man bound by recognisance has the privilege of objecting to a grand juror, who may never have, his case brought before him, and if this be the constitutional privilege of men so circumstanced, what will be said of that third class, who are accused for the first time after the grand jury shall have been sworn? shall they be deprived of this alleged

night at the option of their prosecutors, and shall the postponement of the accusation send the accused to trial, bereft of an advantage which is said to be important, and of a challenge which is said to be indispensable to a fair trial?

It is a mistake of the nature of a challenge, to suppose that it lies to a grand juror. A challenge is an objection by a man about to be tried, to the man who is about to try him, but the grand jury are not to try any man; they are not brought into contact with any accused person. Their oath merely binds them to inquire into the offences brought before them, and pronounce, whether there be sufficient reason for putting those offences into a state for further investigation. Until their bill be found, no man can tell who they are; when he, against whom they find a bill, sees their names in the caption of the indictment, if he discover a legal objection to any of them, he may, by plea, urge that objection as a reason for not answering to that indictment, but the notion of a previous challenge would not only be against principle, but induce absurdities and injustice in practice.

Suppose the case of a man arrested *after* the grand jury is sworn, for a crime committed *before* they were sworn, and who before was not amenable; nay, suppose the case of a man indicted by a grand jury without any previous intimation of his being accused. What opportunity could he have to propound a challenge? If he has a right to such a challenge, he ought not to be tried without an opportunity of exercising it. Your lordships would not try a man without enabling him to challenge the petit jury, and if he has a right to challenge a grand jury you would not deprive was him of that right; and yet, in the two cases which I have supposed, it is impossible that he could avail himself of it.

**Mr. Justice Day.**—It often happens, that a man is tried at an assizes for an offence committed after the assizes commenced.

**Mr. Solicitor General.**—Undoubtedly, the practice is so, and instances are not uncommon in cases of perjury committed during an assize. The bill of indictment, in such a case, is found by a grand jury, sworn before the crime was committed. But I apprehend, that it is a practice liable to objection, for the grand jury is sworn to inquire into offences committed, that is, *theretofore committed*, and the proper course is, in the case of a crime committed after the grand jury has been sworn, to swear a new grand jury to inquire of the subsequent case. But with respect to the practice contended for, it would extend to this, that no man could be tried at an assizes, who was not in custody, or bound by recognizance at the time when the grand jury was sworn.

**Mr. Justice Day.**—That would be to allow him to take advantage of his own default.

**Mr. Solicitor General.**—My lord, with great

respect, that does not necessarily follow: Suppose an information sworn against a man for a capital crime, and the accused person knows nothing of the charge; suppose that the magistrate does not grant a warrant, or having granted it, that it cannot be executed at the time, or is not executed from the apine-ness of the constable; yet the grand jury may be, and is sworn; the prosecutor is examined before them, and the bill of indictment is found. The accused in such a case, is in no default; and yet, if he be brought in afterwards by a bench warrant issued upon the indictment found, and either at the same or subsequent assizes be tried, convicted, and executed, his execution would be a murder, upon the argument which is contended for, because he would be tried without the benefit of a legal challenge. How can a judge, going circuit, excuse himself for not calling upon the prisoners to look to their challenges, when the grand jury were to be sworn. Has an instance been known in the recollection of any man who hears me of such a practice? I have had some experience myself, and I have never known it; but I appeal to the experience of your lordships, which has been much more considerable; do you remember an instance, in which the sheriff has been called upon to produce his prisoners before the grand jury was sworn?

Have you ever known that persons out upon recognizances of bail were called to appear before the grand jury were sworn, and to look to their challenges? And if all such persons had a right to challenge a grand juror, how can these omissions be excused? or what can justify the practice of granting bench warrants upon indictments found against persons who never had the opportunity of challenging the grand jury?

But, my lords, exclusive of the ground upon which I have been arguing hitherto, you will be pleased to observe, that this is a challenge to the favour.

I do not anticipate the argument which may arise in case of a demurrer to a plea of such a matter; but I resist the reception of such a challenge upon the grounds of decency and of example. Your lordships, in this instance, will establish a precedent, if you admit the challenge, that where the king, and the king *only* in his public character, appears as a prosecutor, for the benefit of public justice, he shall be put to answer, whether a grand juror stands in a favourable relation to him or not. Upon constitutional doctrine, it is very alarming and novel, to say, that any man indicted, or who apprehends an indictment, may, *quia timet*, allege, that a particular grand juror is in a favourable and corrupt relation to the Crown! It is against all precedent and principle. The king is not known to the country and the constitution as an interested man, or a man capable of being so. What is the meaning of *favour* in such an objection? Is it not the partiality which arises from friendship, from affinity, from connection, from corruption, and

should I not abandon and abdicate the character of the king, if I admitted, that it should be argued in a court of justice, where the name of the first magistrate of this free constitution is used for the attainment of justice, that he is to answer, whether he stands in a favourable or corrupt relation with any person whatsoever? My lords, there is a broad distinction between the Crown and a subject upon this point, and it is a perfect mistake, to apply the challenge of favour, to the king as a personal prosecutor: no individual interest of his is concerned, and there is a constitutional indecorum in calling upon the king to answer, whether he stands in a corrupt relation to a juror, when he is not personally concerned. It is the opinion of a man of high authority, much more than Mr. Sergeant Hawkins, or the compiler of Bacon's Abridgment, that a challenge for favour does not apply to the Crown. Co. Lit. 156. "No challenge for favour lies in the case of the king."

My lords, I might refer you to a case, which if there were nothing more to support it than the judge who presided, I would not consider as high constitutional authority. I would not mention the name of Ch. J. Jeffries, unless he were supported by the authority of the greatest constitutional lawyer that ever sat in a court of justice: I mean my lord Holt, assisted by Treby and Rokeby, men of high character (I shall not mention the case before Jeffries, in the reign of Cha. 2nd). The case before them was in the reign of William 3rd, a time in which constitutional jealousy was peculiarly alive, and when the principles of civil liberty were firmly established, and strenuously supported.

Lord Holt's character does not however, depend upon the times in which he lived; there was no period, however corrupt or degenerate, in which a constitutional opinion might not be expected from lord Holt—the opinion I refer to, is strong and emphatic—not volunteered by him upon an unnecessary occasion, but when he was anxious to let the public know, what the law was, and he announced it from the bench, upon a great and important occasion. Sir Wm. Parkyn's case applies the stronger, as being the case, not of a grand, but of a petit jury. In that case, a jury was called, to decide upon the life and inheritable blood of a man of rank and fortune. A challenge was taken, because one of the jurors was the king's servant—a challenge to the favour.—The attorney-general did not think proper to struggle the point, but desired that the juror might stand by, and that another might be called, which shows that the trial was conducted with constitutional temper, and was not to be compared to the arbitrary proceedings of former times. But after a second challenge was taken for the same cause, lord Holt said to the prisoner, "The reason of these challenges is, because these jurors are the king's servants—I am to acquaint you, that it is no cause of challenge. "But the king's counsel do not resist it, if

"there are enough beside, and I speak this, that "I would not have it go as a precedent, that "the cause you assign is a good cause,"

Such, my lords, is the broad principle assigned by high authority, in a case that called directly for an opinion from the bench, expressed in the indignant language of a great constitutional judge, whose feelings were roused at the notion, that the king, in his public character of public accuser, lending his name for public purposes, should be made subject to the imputation of favour.

I infer from that authority, that if the attorney-general had not yielded to the objection which was made a cause of challenge in a case of high treason—that if he had taken another course, lord Holt would not have called upon the counsel for the Crown to demur, and that he would not allow a matter to be put upon the record, which militated against the principles of the constitution.

No man is at liberty to say what the present case may turn out to be. Public rumour is not to be acted upon; and the counsel on the other side must argue, that if their client be apprehensive of an indictment for the minutest trespass, a pick-pocket, he is at liberty to say, that the first magistrate in the state shall be called upon to answer the imputation of corruption. It seems to be a proceeding which violates every principle of law, sense, and our constitution. The king, as prosecutor, represents public justice, and the commonwealth and the peace of his realm is called the king's peace. To say that a juror stands in favour to him; is to say, that he stands in favour to the commonwealth and to the public peace; it imputes to the political capacity of our sovereign what can only be true of an individual character, and is as absurd as it is unconstitutional.

I shall give your lordships no farther trouble. Our argument on the part of the Crown is reducible to two propositions:—first, that no challenge lies to any grand juror; but that the proper mode of objecting to him is by plea in abatement of the indictment when it has been found. The next proposition is, that even if a challenge does lie to a grand juror, no challenge for favour to the king lies even to a petit juror; and *a multo fortiori*, it does not lie to a grand juror. Upon those grounds, we hope, that your lordships will quash this challenge, and not call upon the Crown to take issue, or demur to it.

Mr. Burrowes.—My lords, I am of counsel for the person tendering the challenge, and on coming to the Court this day, I did imagine that the case had stood over, in order that the counsel for the Crown might exercise their discretion, whether they would demur or plead.

Mr. Solicitor General.—My lords, I hope it is in your recollection, that I submitted to the

judgment of the Court, whether the Crown should be put to answer the challenge, and that I suggested the adjournment, for the purpose of conferring with the attorney-general upon the subject.

*Mr. Burrows.*—My lords, I am not saying that the counsel for the Crown intended to act differently from what they have done. I am merely stating my own impression of the matter; and expecting to have an issue in fact to be tried or a demurer to be argued, I am now called upon to argue, I know not whether one or two questions; whether the challenge should be quashed, without suffering it to go upon the record; or whether it be a good challenge. These questions are as distinct as can be imagined; and it is the usual course to argue matters of law, question after question, where the Court feels any difficulty; not to argue accidentally, whether there be difficulty, or not. If there be a doubt, whether the challenge should be received, I am ready to contend, that *ex debito justitiæ*, it ought to be received. But I really feel some difficulty in arguing that question, and keeping clear of the merits of the challenge. I will, however, endeavour to distinguish them, and only transiently touch upon the merits, or demerits of the challenge.

*Mr. Justice Osborne.*—It was put distinctly by the solicitor-general, that in *no case* does a challenge lie to a grand jury.

*Mr. Burrows.*—So I understand, and it is insisted upon as a corollary, that the challenge must be quashed and the Crown not put to answer it. I will advert but little, if at all, to the merits of the challenge. My very learned and eloquent friend the solicitor-general, who is so anxious to vindicate the criminal law of the land, seems to forget the importance of grand jurors. This is the first time in my life, in which I have heard it argued, that a grand juror is no essential part of the law in bringing a man to trial. I have always understood, and have known it repeatedly mentioned, that no man can be legally tried, except in cases of criminal information, unless two verdicts have passed upon him; one by the grand jury, twelve of whom found the bill of indictment; and secondly, by the petit jury, all of whom must concur in the verdict. Therefore, the main pillar of the argument, founded upon the nature of the challenge, is not only removed as a difficulty, but it turns round, and becomes an invincible auxiliary to those who contend for the contrary doctrine.

It is not only not immaterial by whom a bill of indictment is found, or how it is found; but a legal grand jury has always been considered as a necessary ingredient in a criminal proceeding; and the constitution requires, that a double verdict should pronounce a sentence of guilt upon the accused; one deciding, that the charge should be examined, and the other determining finally upon its merits. This is the great boast of the constitution—without a grand jury our liberties may be endangered: both juries are necessary, and are equally open

to objection in the formation. But this is the first day in which I have heard it mentioned, that an accused man feels an interest in the integrity of one, and a perfect indifference in the character of the other. Is the swearing of a grand jury a mere formal ceremony in which a prisoner has no rights or interests? If he has not, what is the meaning of the common law in requiring, that they should be freeholders—that they should be *probi & legales homines omni exceptione majores*, to whom the property, liberty, and life of the subject are confided? Therefore, my lords, it really appears to me, that instead of saying, that the constitutional doctrine of Hawkins and Hale and Bacon is no authority—instead of saying, that their positions are novel, it is more novel to deny the right of the prisoner to investigate the qualifications of a juror, when bringing the accused to trial, which I have heard, for the first time, this day.

My lords, there is not, in the whole system of our law, any subject in which constitutional jealousy is so watchful, as in guarding the purity of juries. The subject is cautiously furnished with two classes of objections for the protection of his liberty—one arising from the character of the person arraying the jury, and the other from the character of the individuals impanelled; and this is the first time in which I have heard that those objections were confined to the petit jury. I say, that they apply equally to the grand, as to the petit jury—the same principle pervades the whole system,—the objections are equally applicable to both—the qualifications extend to both—they were intended to secure the independence of both; and it might as well be contended, that they do not apply to a special jury, because they are applicable to all juries. I said, that the law provides two modes for the purity of juries;—the first gives the prisoner the advantage of attacking the whole array, flowing from the character of the person making the return; that where such a person stands in a character from whence partiality, or non-indifference (in the ancient language of the law) may be fairly inferred, there results necessarily a principal challenge to the array; and there it is the duty of the Court to decide upon the objection and quash the array, without resorting to triers further than to find the fact: the implied unfitness of the officer vitiates all the polls, and the effect is the same, as if every one of the array lay under the same taint. The possibility of the sheriff lying under an imputation from whence such an inference arises, is not only obvious, but is recognized in *Trials per pais, Hawkins & Co. Lit.* The grounds of challenge are almost undefined:—every thing which may be referred to triers to satisfy their consciences that there is partiality in the person returning the jury—it is emphatically a case for the triers to ascertain the fact, whether it created partiality, or not; in addition to this, there are cases of challenge to the individuals; and the party, who might affect the entire array, by



an imputation upon the mode of arraying the jury, may waive that, and attack each individual, by an objection, which goes to set him aside; every objection which would go to taint the panel, if applicable to the officer, will set aside the poll, if it can reach the individual; and a man is not legally tried, who has not the benefit of trial by such a jury as the law takes the precaution he shall have; and he has not that jury, unless he has the benefit of these legal objections as they may arise.

What is there in a criminal proceeding to distinguish the rights of the subject, in respect of challenge to juries, from his rights in civil actions? Can it be the magnitude of the case, or the delicacy of the subject? Is the protection to be found in cases of a peculiar description? No. But it is said, that it arises from the character of the prosecutor, whose great and impeccable nature is such, that it would be violated, if he were supposed to be corrupt or partial. Is not this begging the question? Does not the counsel require a concession to which he is not entitled, in order to deprive the subject of a privilege to which he is entitled?

But, my lords, it is said to be disrespectful and unconstitutional to insinuate, that the king, prosecuting in his public character, could stand in a partial relation with a grand juror. What! shall sycophants be raised to such situations, and no objection made to them, without its being supposed, that it reflected upon the sovereign, who lives in ignorance of the entire transaction, whose name is assumed as a shield of protection, and whose feelings would revolt, if he were informed that such proceedings were resorted to for the purpose of depriving his subjects of their rights? The observation was unfair, and there is no reason, in principle, for saying, that such a challenge is allowable in a *civil* case, but not in a *criminal* case. Why should not the objection apply to every man who is impanelled by the authority of the sheriff, if it be founded in fact.

My learned friend has also been unfair in supposing this to be the case of a petty offender—a pick-pocket! I do not wish to advert to cases which might be noticed; but is it fair, because there are cases of mean, low, and pitiful offences, that they should be held out to the Court as an argument not to decide the general question? It is enough to rouse the constitutional feelings of the Court, that such an attempt should be made, by introducing such petty offenders to induce a decision against a privilege of the highest value. The doctrine of my learned friend, respecting pick-pockets, must extend to men of the highest dignity.

No authority has been resorted to by the other side: there has been much preliminary discussion, and arguments *ab inconvenienti* have been urged. It has been contended, that this right should not be indulged, and your lordships are asked, whether it is to be tolerated; that every man, at an assizes or commission of gaol delivery, may come forward to challenge a grand

juror, who is to be sworn to present all offences? My lords, if we can suppose any thing so chimerical, as a conspiracy among all the persons accused at an assizes to make sham points, for the purpose of consuming time, it would be a great grievance. But yet it is such as must be submitted to. It is admitted to be a legal privilege, and if inconvenience result from the exercise of such a right, it is an alloy attending a sterling good; if it shall be pushed to an excess, such as has been described (but of which experience has furnished no example) a bill should be brought into parliament to take these privileges away, and thereby remove all inconveniences whatsoever.

But I do not see how these consequences can arise:—Is it not extravagant to imagine, that every man, to be tried at a commission of oyer and terminer, should stand up in court and say, because he apprehends that an indictment will be preferred against him, therefore he will object to the grand jury? I do not say, that every man in such a situation would be received: those not in custody, or not bound by recognizance to attend, may not be regarded. But a man in custody, or bound by recognizance to appear, is impleaded as it were by the crown; the swearing of the grand jury is not a matter of indifference to him; and being entitled to object, I ask your lordships, whether it is not more likely to procrastinate and impede the progress of public justice, to lie by, and after a lapse of time, take advantage of an objection, than to urge it *in limine*, and have the opinion of the Court upon it, in the first instance? If all the accused persons should concur in making legal objections, there must be some substantial reasons for their doing so, and will it not expedite the course of proceedings to state them in the outset, rather than reserve them for a later period, when, if they proved successful, they would render a second commencement of all such proceedings necessary? Therefore, I conceive, that, if your lordships were now legislating upon the subject, it would be more expedient to have a challenge to a grand juror received *before* he is sworn, than *after*, and when the party is put to plead to the indictment, which must fail, if the plea be allowed.

My lords, it is every where laid down, that you must challenge the polls, *before* they are sworn, and not *after*. My learned and eloquent friend was not ignorant of this; neither was he unapprized of the inference to be derived from it; and, therefore, he contended, that no challenge lies to a grand juror at all; but if the accused has an objection, he must plead it in abatement of the indictment; and it is asked, if there be a right to challenge when the grand juror comes to be sworn, how account for the hardships imposed upon persons accused, who are not present in court, when the grand jury is sworn, and know nothing of their being sworn? I answer, that if such persons do not attend, they waive their right. The maxim is, "*Vigilantibus et non dormientibus*

*servit lex;*" and is it not a strange argument, that because the necessary modes of proceeding render it difficult to know how, in some instances, parties can challenge grand juries, therefore they shall be deprived of it in every instance? Is it not strange to say, that because there cannot be unlimited protection there shall be no protection at all? Mr. Solicitor general foresaw the justice of the criterion to which I put it, because he avowed a doctrine, from which it would follow, that if twenty-three scullions from the king's kitchen were arrayed upon the jury, no man would have a right to challenge them, and he avowed with triumph a proposition which calls upon the court to reject the present challenge. I more than countervail it, by stating the monstrous consequences that would follow, if any twenty-three men may be put upon the grand jury without a right on the part of the accused to challenge one of them! In *Trials per Pais*, 196, it is laid down, that a subject may challenge the *poll*, in a case where the king is a party.

Lord Chief Justice *Downes*.—That is done every day in cases of petit jurors.

Mr. *Burrowes*.—My lords, I see no distinction between them except in degree; the grand jury are of an higher order, but they equally pass upon the life and liberty of the subject. All who are instrumental in trying him should be *omni exceptiones majores*. If a man cannot be hanged without the verdict of a petit jury against him, he cannot go before that petit jury without an indictment found by the grand jury, and therefore all the men concerned, whether at the head or tail of the proceeding, should be *omni exceptiones majores*. My lords, we rely upon the authority of Hawkins and Bacon, and I do not find, that any thing has been urged on the other side, but a *dictum* of Holt, and that with reference to a particular mode of challenge, which does not apply to the present case.

The *Solicitor General* argued, that all objections to grand jurors originated in the statute 11 Hen. 4, c. 9.

Mr. Justice *Daly*.—In 3rd Inst. lord Coke says that this statute was in a great measure declaratory of the law.

Mr. *Burrowes*.—But, my lords, it was argued as if the statute created the objection.

Lord Chief Justice *Downes*.—If we put the two sections of Hawkins together, there is something very difficult to be reconciled and looks as if he himself were doubtful upon the subject. In the 16th section, he says, "Also it seems, that any one who is under prosecution for any crime whatsoever, may, by the common law, before he is indicted, challenge any of the persons returned on the grand jury." The authority referred to by him is the Year Book, 11 H. 4, c. 41, where it was after indictment found, and a plea filed. Afterwards in

the 18th section, he says, "It is resolved in the Year Book of 11 Hen. 4, by the advice of all the justices, that one outlawed on an indictment of felony, may plead in avoidance of it, that one of the indictors was outlawed for felony, &c." Now, if a party can take an objection in a subsequent stage of a cause, can he also take it at a prior one? and is there not much force in the reasoning, that where the objection is good by plea to the indictment when found, he cannot avail himself of it in this stage? Hawkins goes on, "But it seems to be the general opinion that this resolution is rather grounded on the statute of 11 Henry 4, c. 9, which was made in the same term in which this resolution was given, than on the common law; because it appears by the very same Year Book, that when this plea was first proposed, it was disallowed, from whence, as I suppose, it is collected, that the subsequent resolution was founded on the authority of the said statute, which may be intended to have been made after the plea was disallowed, and before the subsequent resolution by which it was adjudged good. Yet, considering, that the said resolution was given in the beginning of Hilary term, and that the parliament which made the said statute was not holden before the beginning of the same term, and therefore, it is not likely, that the said statute was so soon made; and also considering that the said resolution was given by the advice of all the judges, who seem to have been consulted about the validity of the plea above-mentioned at the common law, and takes no manner of notice of any statute, but only of the law in general, it may deserve a question, whether such plea be not good at the common law." Now, if this be a good plea at common law, does not that furnish an argument as to the period of time, when the objection is to be taken, that is *after* the indictment, and by *pleading* in avoidance of it?

Mr. *Burrowes*.—My lord, it occurs to me, that the statute itself strongly tends to reconcile a challenge with a plea; it recites, that inquests were taken of persons named to the justices, without due return of the sheriff, and enacts that inquests shall be composed of the king's lawful liege people, if they be otherwise, an indictment found by them may be avoided; but that is a distinct and different mode of relief from that to which he was before entitled.

Lord Chief Justice *Downes*.—Suppose the statute to have given a new right of objection, would it not have taken up the original mode and said, the party may challenge such a juror? But the construction has been uniform from the moment of its passing, that it adopted a pre-existing mode, which was by plea.

Mr. *Burrowes*.—My lord, I do not apprehend that to be so. A man may challenge the entire array for a taint of which all parties are affected and therefore all must fall. But if it affect only one, the objection must be confined to that individual.

dividual, and does not vitiate the entire array. And therefore, the only question is, whether at common law, the party has not a right to set aside one man, not thereby affecting the panel otherwise than by reducing the number so much. The statute recites a practice which had prevailed of returning outlaws and others, whose qualifications were not known, and enacts that indictments found by such may be avoided; that can be done only by plea, which will have the effect of a challenge to the whole array. The statute is confined to the case of an indictment found, and therefore the remedy given to avoid it may stand perfectly distinguishable from a right existing, which is not taken away by a remedial, beneficial law, extending provisions but not abridging any.

Therefore, my lords, we say, that so far as respects the right of objecting to the polls, there is no distinction between a grand and petit jury, and every reason and principle even of convenience, applies in support of the mode, which meets the prosecution *in limine*. It will not be contended, that a grand jury is a mere matter of form and ceremony, in which the subject has no concern, though tending to affect his life. And therefore, with great respect, we rely, that this is a case in which *ex debito justitiæ*, the party has a right to challenge a man who is about to be sworn to present whether a charge preferred be true or false; that the objection ought not to be extinguished *in limine*, without the possibility of having a more solemn decision: and that the counsel for the crown have not succeeded in distinguishing between a grand and petit jury. They were bound to prove, that no man can arrest the progress of a grand juror to that station, which may enable him to pronounce a fatal decision upon him.

The solicitor general entered into the particulars and form of the challenge. I had no wish to embarrass the case with niceties and verbal distinctions. There are many objections to grand jurors which are not recited in the statute, and I hope it is not considered as a matter of indifference who are impanelled. My lords, if I am to argue this case as if it were upon a demurrer, I will say a few words upon it.

Mr. Justice Day.—The case has not come to that yet.

Mr. Mac Nally.—I will take the liberty to cite a case, which I believe will not appear less interesting or less conclusive than any of those to which the attention of the court has been already called. The case is recent; the question arose on the arraignment of the king, against the unfortunate brothers, Henry and John Sheares.\* On that trial lord Carleton, then chief justice of the Common pleas of Ireland, assisted by Crookshank justice, George baron, and one of the judges now sitting on the bench, delivered their opinion on the very point before the court. Lord Holt's name has

been mentioned, but neither lord Holt, nor any other judge whom England can boast, held a character more respectable for judicial knowledge than lord Carleton. In the case I allude to, the grand inquest were sworn, and the prisoners on being arraigned presented a plea in abatement of the indictment. The plea was to this effect,—that a person named Decluzeau was an alien, a Frenchman born, and incompetent to serve the office of a grand juror. On this plea being tendered the chief justice, after conferring with his brethren said,—“This plea, which is a plea in abatement, is put in as a substitute for a challenge, the party not being present at the swearing of the grand jury; if he had been present and had taken a challenge, the subject matter of that challenge must have been instantly inquired into.” Is not this an opinion in point? I read it from Mr. Ridgeway's Report. 19.\*

I have another and a serious remark to make to the Court. There is a statute, the 48th of the king, the Police act, and I advise Mr. Sheriff to attend to that statute in future, when he summons grand jurors. Attention to that statute will probably set at rest the question raised upon the propriety, upon the legality of putting police magistrates upon the panel of the grand inquest. From the enactment of this statute, it appears how those justices are nominated. It also appears that one divisional justice shall attend at each office every day, from ten in the morning until eight in the evening, and at such other times and places as shall be found necessary; and two justices shall attend together from eleven in the forenoon until three in the afternoon, and the barrister shall attend at all hours though not his turn or duty, when his presence is necessary. These magistrates are always to be within call. How are they to be within call if confined on grand juries? if locked up in a jury-room? I venture to assert, that these police justices are, by virtue of the act of parliament which I have referred to, and which institutes them, incompetent to act as grand jurors, and for this very good reason, that they are required imperatively, by the act, to sit in their offices from ten in the morning until three in the afternoon—their duties are not to be executed in a jury-room, or jury-box, but in their respective offices and at their desks. The act ties them up.

Lord Chief Justice Downes.—Show me the report.

Mr. Mac Nally.—Here it is my lord.

Lord Chief Justice Downes.—Go on.

Mr. Mac Nally.—I was about to show your lordships that from a fair explanation of the police act, the intention of the legislature, the duties of office, and the restriction put on the justices whom that act instituted, they are not eligible to be sworn on the grand inquest. In addition, I beg leave to observe, that so astute

\* 6 How. Mod. St. Trials, 255.

\* 6 How. Mod. St. Tr. p. 270.

has parliament been in coercing those justices from interfering in any matter of law whatever, that they are not only rendered incapable of sitting in parliament, but barristers, while in office, are prohibited from practising in their profession in court; from drawing deeds of pleadings in law or equity; or even giving an opinion, under a heavy penalty—and it is fair to say, that the legislature has put no trust in them, but that which the act specially points out. This shows that the law looks upon them with a jealous eye; and, the spirit of the law points out the incapacity of the lay magistrate as strongly as the letter of the law points only to the ineligibility of the professional magistrates. Yet, my lords, though the intent of the statute is as I have described, I see seven justices of police ranged in the grand jury box as good men and true—there they stand all in a row, alderman Hone at their head, down to “though last not least in love,” major Sirr.\* Let me ask, are these gentlemen suited for legal inquiries between the king and the subject, where they are to be sworn to present without favour or affection. If they have not favour to the Crown, have they favour to themselves? What is the station of a grand jury? I imbibed strong ideas on this great and legal subject not long since from a learned judge on the bench, Mr. Justice Day. His lordship’s words were these—“the grand jury is a bulwark raised by the constitution, between the accuser and the accused.” Let me ask this, if a grand juror is a constitutional guardian of our rights and liberties, should he not be as independent of the influence of the Crown as a judge? I need not inquire now why judges were made independent, but I trust in heaven they are so. Why should a juror’s free-will be shackled by apprehensions of giving displeasure to the government? And why should the fear of being dismissed from office be suspended over his head? With grand jurors so circumstanced—so trembling under the apprehension of being punished by such a visitation as George Lidwell was, for a conscientious discharge of his duty, the liberty of the subject must lose all security and be put into jeopardy. That gentleman, your lordships know, was deprived of the commission of the peace, for attending a Catholic meeting, and avowing his friendly sentiments to the Catholic body.

*Lord Chief Justice.*—Mr. Mac Nally that charge should be made in the presence of the person who is responsible.

*Mr. Mac Nally.*—True my lords—I feel I am irregular—but when the heart and the understanding are hurried on by the same impulse, there is a liability to error—I meant only to illustrate—I was endeavouring to show that the grand jury in such a case as the pre-

sent, should be as free as possible from the operation of influence or the control of power. I do not consider these worthy metropolitan magistrates, now in the grand jury box, as they must have been considered, merely *factotum* men—but I consider their worships as *si totum*, who may be turned round and round by these who appoint them, and turn up or turn down just as their spinner pleases—men who will turn any way rather than turn out. As mere appointees of the Crown, they are so plainly submissive to its influence, order and control, that I must hope your lordships will be of opinion that alderman Hone is not possessed of that independence, that freedom, which is essential to render him eligible to sit as a grand juror, in a cause between the Crown and the subject on a criminal prosecution by indictment.

Mr. Gould rose to argue in favour of the challenge; but the Court said, they would not hear more than two counsel for the defendant, to the same point.

*Mr. Justice Osborne.*—In this case, as there is some shade of difference between the opinion of one of the judges of the Court, and that of the rest, although the result of his opinion is adverse to the challenge, but upon a distinct ground, I will proceed to state my opinion, which I will give briefly, not wishing to mispend the public time.

Unquestionably, in looking through the books, which treat of the subject of juries, from the first to the last, we are led into difficulties by the confused manner in which the subject is taken up by them all—there is seldom a distinction made, between grand and petit-jurors, or between criminal and civil cases; they are mentioned confusedly in all the books. But we do not find in any book, or in the experience of any professional man, that a challenge lies to a grand juror when he comes to be sworn. I would pay very little respect indeed to the principles which influence the administration of the criminal law in general, if I held that such a right of challenge existed, but that there was no form or mode established in practice, by which the subject could avail himself of it. That would be monstrous. We know, that the constant practice upon circuit is, to call upon the grand jury, in the absence, and necessarily in the absence, of the parties to be tried. I concur entirely with the counsel for the defendant, that the disqualifications of grand jurors and petit jurors are the same; a man must be indifferent and impartial as a grand juror, as well as a petit juror. But from the nature of their duty arises this essential difference between them, that with respect to one, the objection must be by challenge, which is *immediate*; and as to the other, not immediate, that is, not by challenge, when the man called as a grand juror is to be sworn, but as a plea. The sacred right of the subject is in both cases protected. No man should be tried by a disqualified

\* *Vide Hevey, v. Sirr*, 7 How. Mod. St. Tr. p. 6.

person; but the objection, on the ground of disqualification, is to be urged at the proper period. A party accused must avail himself of a challenge to a petit juror, when called to be sworn, but if the objection be not then made, the time is lapsed, and the objection cannot be afterwards urged. In the case of a grand juror, the objection is to be relied upon, in the form of a *plea*. Therefore, I think that there does not exist, by the common law, the right to challenge a grand juror, which has been contended for: and in so determining, I do not abridge the privilege of the subject; but I stand upon what has been always considered a satisfactory proof of what the common law is—the general practice of the courts from time immemorial to the present day; a practice, which would be most unjust and severe, and would tend to make many executions murders, by representing them to be illegal, which they must be, if the party sentenced were deprived by the practice of the courts, of the benefit of that challenge, which the law gave him. This practice is not liable to the censure to which it must have been liable, if it occasioned the mischief which has been supposed:—the subject is not deprived of any advantage which the law gives him, and the modes of insisting upon these advantages are ascertained—the mode of objecting to a petit juror is by *challenge*—that of objecting to a grand juror, is by *plea*.

I am of opinion, therefore, that a challenge cannot be made to a grand juror, and by so determining, the subject is not exposed to any difficulty. It appears to me, that the passages in Hawkins, in this particular, are not to be relied upon as authority at all; because, when we examine the several sections, or paragraphs in his book, we see painted, as it were, the countenance of a man in doubt—that part of his book is a discussion upon a controverted, or uncertain point, rather than the opinion of a juridical author. Perhaps, he may give the leaning of his own mind; but it is impossible to consider it as the authority of Hawkins in favour of this challenge, when his language is contradictory and not to be reconciled,

**Mr. Finlay.**—My lords, if it be not improper, while the Court are giving judgment, I beg to mention several authorities, independent of that taken from Mr. Sergeant Hawkins. In Wood's Inst. it is laid down, that a grand juror may be challenged by one, before he is indicted—and the same is also to be found in Cro. Car. 131, 135, 147.

**Mr. Justice Osborne.**—I wish you had mentioned these references before, because they require to be canvassed before they can be acknowledged as authorities.

**Mr. Solicitor General.**—My lords, all these refer to Withipole's case, and are founded upon it.

**Lord Chief Justice Downes.**—And there is a query in the margin of Hawkins, referring to

these pages in Cro. Car. intimating a doubt, that they did not support the text.

**Mr. Justice Dely.**—In this case, a challenge has been taken to a grand juror upon the ground, that he is a placeman under government. The challenge is founded upon a position in Hawk. Pl. Cor. where he says, "that it seems that any one who is under a prosecution for any crime whatsoever, may, by the common law, before he is indicted, challenge any of the persons returned on the grand jury." As far as my research has gone, there is no authority for that position, except Hawkins; because Bac. Abr. and others, which have been cited, are the mere echoes of Hawkins in that particular, who refers to a case which does not support the position.

The authority of Hawkins stands very high, but, in the instance now before the court, he rests his opinion upon cases which do not bear him out at all. Withipole's case, in Cro. Car. came before the Court upon a plea in abatement, filed by a person indicted for murder, before the coroner, stating, that the foreman of the grand jury and fourteen others were nominated by a person who was not the returning officer. The particular question there was, whether an indictment, or inquest before the coroner, came within the purview of the stat. 11 Hen. 4. It was undisputed that all other indictments came within the purview of it:—the only doubt was, as to the proceeding before the coroner, and it was ultimately held, that such proceeding was equally within the purview of the act. That is an extremely ancient statute, and I take it, that it introduces new objections to grand jurors, and creates disabilities in some particulars, which did not exist at common law. I think it is fair to say, that if a challenge existed to a grand juror at common law, that statute would have given the challenge as a preliminary mode to the new causes of objection, instead of a plea, which must be subsequent to the grand jury being sworn, and indictment found.

The statute makes the indictment void, if found by a grand juror to whom the objection therein mentioned applies, and it gives the advantage of making the objection by plea, after the indictment found. It is very remarkable, that the stat. of Hen. 8, which seems to follow up the mischief that was particularly to be remedied, recites, that notwithstanding the statute of Hen. 4. irregularities were practised by sheriffs and bailiffs, and that the remedies previously enacted were not sufficient. What then does it do? It gives no challenge, but it enacts, that the justices, notwithstanding any return by the sheriff, may new model it, and put others in the place of those returned by the sheriff. Here then, are two statutes upon the same subject matter, giving remedies of a different kind from that of challenge, and taking no notice of a remedy by challenge.

But, it is contended, that a challenge lies to a grand juror at common law, and that the

statutes alluded to, intended to give an additional remedy. It appears to me perfectly plain, that if a challenge lies to a grand juror, it must be made in the same form and manner as to a petit juror. How then does a challenge lie to a petit juror? The panel is called over, in the presence of the persons to be tried; they are called upon, to look to their challenges—to challenge the juror as he comes to the book, otherwise the challenge is too late. I take it, that from this form, which is the only form to be found in the books, or known in practice, the challenge to a petit juror must be taken at a particular time, and cannot be taken afterwards. How, then, does it stand with regard to a grand juror? The common and universal practice is, to swear a grand jury in the absence of all the persons who may be tried at that sessions at which the grand jury is sworn. No persons are called but the grand jurors themselves, and upon the best research which I have been able to make into this subject, I find that every valid objection, which can be made to a petit juror, may be made to a grand juror, but by a different mode:—the objection to the former is by challenge, the objection to the latter, is, by plea. Therefore, upon the whole, I am of opinion, that no challenge whatever lies to a grand juror, and it does not appear that it ever was allowed.

Mr. Justice Day.—I am extremely sorry that there should be any shade of difference in the opinion of the Court upon a point of great consequence; but notwithstanding all that I have heard, from the bar and from the bench, I cannot give up the old opinion that I have ever entertained (perhaps it is erroneous, but I confess that I have entertained it from my coming to the bar to the present day) that, generally speaking, a challenge lies to a grand juror as well as to a petit juror. If I am in error I have the consolation to err in good company; in company with Hawkins, Bacon, (who is L. C. B. Gilbert) and Lord Carleton, an enlightened, experienced, and eminent judge, of deep research, and never hasty in giving a judicial opinion. These I consider as powerful authorities in support of the right of challenge contended for on behalf of the defendant—and therefore, when the solicitor-general has not been able to cite a single authority to the contrary, which the counsel for the defendant had a right to demand, I cannot but bow to those in favour of challenge. Sir Wm. Withpole's case,\* which has been adverted to, furnishes some illustration of the decision. Hawkins says, "it seems that any one under "prosecution, may, before he is indicted, "challenge any of the persons returned on the "grand jury, as being outlawed for felony, or "villains, or returned at the instance of the "prosecutor, or not returned by the proper "officer." In Withpole's case, the prisoner was

indicted upon an inquest found before the coroner, and being arraigned upon that inquest, he pleaded in abatement that two of the jurors were outlawed in a personal action; and upon reference to the twelve judges, a majority were of opinion, that the 11 Hen. 4. c. 9, extended to civil outlawries, "for (says the book) such "persons are not *probi & legales homines*, to be "sworn on an inquest, and may be challenged "for that cause." Perhaps I do not construe this case right, in the hurry in which this matter is disposed of, from an anxiety to save the public time. The jurors sworn before the Coroner are quasi grand jurors, and the verdict pronounced by them is in the nature of an indictment upon which the party may be arraigned and tried by a petit jury; then if the grand jurors impanelled before a coroner may be challenged, why may not those impanelled before justices of Oyer and Terminer? It is admitted, that objections lay at common law, for want of freehold, outlawry, villeinage, &c. Then how was the subject to avail himself of those objections where they or any of them happened to occur, before the statute of Hen. 4, which gives the plea in abatement, unless by challenge? And if the subject had that privilege at common law, what has happened to deprive him of it? Certainly not the statute of Hen. 4; for that is a remedial statute, not substituting the plea in abatement after indictment, for challenge before indictment, but auxiliary to the defective common law privilege of challenge. That privilege was found egregiously defective in this, that the person charged was either in prison, or not amenable, or ignorant of any information preferred against him, and thus not being present, often had not the opportunity of challenging any of the grand jury. Now it is a leading maxim that a remedial law never puts an end to a former right; but it aids defects which impeded the exercise of the right, and cures them. The statute, after reciting that "many were "thus indicted against the course of the common law," that is, by persons against whom legal objections lay, for want of opportunity to challenge before indictment, gave the plea in abatement after. Hawkins, it is true, doubts whether that plea was not competent at common law; but Coke expressly denies that doctrine, and affirms that the plea is given by the statute.

In the case of a petit jury, to be sure, the party has but the one mode of objecting, that is, by challenge, for he pleads the general issue before he is put to his challenge—he has no further plea to urge, and being warned to look to his challenges, if he lapse that opportunity, he is concluded upon the subject.

The Solicitor General argued, with his usual force and power, against this right of challenge, from the many inconveniences, which would result from it; and it must be admitted, that some inconveniences may follow. But we must stifle the sentiments, excited by the familiar abuse of privileges. Great constitutional

\* Cro. Car. 134,

privileges are not to be put down by arguments *ab inconvenienti*. We must not argue from the abuse of the thing to the use of it. That argument would strip the subject of some of his most legitimate and acknowledged privileges; because every judge knows how often they are abused to the great annoyance of the court, and the waste of much precious time. For instance, where several are included in the same indictment, how often have we known them to refuse joining in their challenges, and thus several trials are given to a case which might be dispatched by one? If, because the right of challenge may be abused, it followed, that therefore it does not exist, the same argument would take away the plea in abatement, which is capable of still more vexatious protraction and abuse. In truth, a challenge, in my mind, is less objectionable than dilatory plea; for the latter, if allowed, vitiates not only the indictment objected to, but all the past proceedings of the grand jury, and all must be resumed *de novo*, to the great delay of public business; whereas a challenge to a grand juror may be disposed of with the same facility of dispatch, as a challenge to a petit juror. In the case in *The Year Book*, 11 Hen. 4, the Court said, the party was late. What does that mean? That he should have taken the objection before the indictment was found, which objection, so to be taken, could have been only by challenge. But the plea, which was not offered till after the indictment found, was afterwards allowed; because it was found upon consideration that the statute which had just passed, gave the plea in abatement in addition to the common law right.

Another objection is, that no instance is to be found in the books of a challenge to a grand juror. But the answer is obvious. The party interested seldom is present, and seldom therefore can challenge; and though he did casually attend, the party might think it more prudent to wait the event of the bill prepared against him, and if found, then to plead in abatement. But a privilege becomes not obsolete, or lost, by desuetude.

Upon the whole I think, that the privilege of challenge is the undeniable right of the subject in the case of grand jurors as well as petit jurors. That proud bulwark of civil liberty, the grand jury, would be defective without such privilege in the subject. No subject can be convicted but upon the concurrent verdicts of two juries, each *omni exceptione majores*. And yet, if the privilege of challenge be denied, the sheriff may impanel a grand jury, the most objectionable; of aliens, minors, outlaws, without freehold, &c. without any right or power of exception; and then after the bill is found by a jury, many of them not *probi et legales*, after the shaft has flown and the wound has been inflicted, then truly, the consolation offered is, that the party indicted, if he can afford to fee a counsel, may plead in abatement.

But upon the other ground, which the solicitor-general has insisted on, against the present challenge, I concur with him, namely, that no challenge for favour to the crown does lie in the mouth of any subject. Lord Holt, who was a great constitutional lawyer, denied the right of making such a challenge to a petit juror, even where a man was upon trial for his life; *a multo fortiori*, the objection cannot lie to a grand juror, who only accuses the prisoner and sends him to trial. What could be more revolting, or monstrous than to say, where the crown was not personally, but in its political character concerned, that it had an interest in the accusation of innocence?

Upon the whole, while I admit the general right of the subject to challenge a grand juror, I concur with the court upon this latter ground, in rejecting the challenge now offered.

Lord Chief Justice *Downes*.—This appears to me to be a novel attempt, and it would be attended with great inconvenience to receive a challenge to a grand juror, antecedent to an indictment found. It is the right of the subject to object, in all cases, as well to the grand juror if legally disqualified as to the petit juror. In that, we all agree; it is plain and clear—the only question raised is, as to the mode in which the right should be exercised—at what time should a party, having a valid objection to make to a grand juror, avail himself of it? The general course of making any objection is upon the first opportunity which the party has, and upon looking through the books, there is not a single instance to be found to support this challenge, and if there were, the industry of the gentlemen on both sides would have discovered it. I have taken some pains to search, and I have met no instance whatever of a challenge to a grand juror. I have looked through the *State Trials*, as well as the time allowed, and I have not found an instance of such a challenge being even offered, although so many opportunities of taking a challenge to a grand juror must have occurred. The universal practice is a powerful argument that the challenge will not lie, no instance being found of its having been offered.

The objection to such a challenge is founded upon good reason. The party who comes to urge it, may, or may not be present—may, or may not be indicted; and if it were open to him to make an objection by challenge, because informations have been sworn against him, so must it, in all cases, be open to every person against whom informations have been sworn; and if so, besides the great inconvenience it must create in the administration of justice, many persons must be precluded from availing themselves of the objection afterwards; because, the rule of pleading is, that to take advantage of a disqualification, it must be alleged in the first instance, and if afterwards urged, it must be disallowed, because the party has lost his opportunity—and if he were absent, it was his own default—he might have been present.

Now, although we have no instance, from the oldest books in the law, to those of our own time, where a *challenge* to a grand juror has been taken, there are abundant instances, in which the party has availed himself of objections to the grand jurors, by *plea*; and these instances demonstrate the mode by which the party is to avail himself of such objections.

It would be monstrous to say, that an illegal grand juror should find an indictment, and that the man accused should have no mode to avoid it. If it were a question unsettled, and the accused had no other mode of availing himself of the objection, save by challenge, there is no doubt that he must have the right. But if there be no instance to be found of a challenge for hundreds of years, and there are abundant instances of pleas, it cannot be doubted, that the latter is the only mode by which a party can avail himself of an objection.

I do not go into the nature of the present objection. I rest upon the first part of the argument—that is, supposing the objection to be valid (upon which I give no opinion because it is not necessary), the party can receive no injury by rejecting his challenge, because, when he is called upon to plead, he can make the objection to the indictment in the mode sanctioned by universal practice. The universal practice then is against the challenge. What is the authority relied upon to shew, that a challenge is the only mode of making objections? It is a passage from Hawkins, which conveys no positive opinion, and is followed up by observations, shewing that he himself doubted upon the matter, and it is plain that the case he cites from the Year Book, was the case of an objection taken by *plea*, and not by *challenge*. He states, “that it seems to be the general opinion, that the resolution in the Year Book of 11. Hen. 4. is rather grounded on the statute of 11. Hen. 4. c. 9. which was made in the same term in which the resolution was given, than on the common law,”—and proceeds in that 18th section in the manner which has been already stated. Now, it is worth observing, what the course was, which was taken in that case cited from the Year Book: there was *no challenge* to the grand juror; but the objection was made upon the party *being arraigned*, and then he pleads, that one of the grand jury who found the indictment was himself indicted of felony. He is told, that he is too late, for that he ought to have challenged. If the case rested there, it would be an authority, so far as it went, that the objection was to be made, not by *plea*, but by *challenge*, antecedent to the swearing of the jury. But the case goes on—and the opinion of all the judges was taken, who held, that the plea was good. That was a determination, that a plea was the proper mode; that the first impression of the judges in the Court was wrong; and that their subsequent opinion, and that of the rest of the judges, was in favour of the plea. This then is the authority relied upon by Hawkins, and at all events, it remains liable to doubt, even in

the opinion of Hawkins himself, whether the plea in that case was not good at common law, independent of the statute adverted to, and if it were good as a plea, it seems to follow, that no such *challenge* ought to be taken, for if it could, the objection coming by way of *plea* would come too late: and all the other cases, in which the objection to a grand juror were made by *plea* only, and not by *challenge*, are strong comments upon Hawkins to show, that by plea, and not by challenge, is the mode, in which a party is to avail himself of an objection to a grand juror. As to what lord Carleton said in Sheares's case, it is enough to say, that this point was not made before him; the point there was on a *plea*, and it was not in question whether a challenge would lie or not.

I do not think it necessary to go farther: I say nothing, at present, as to the other objection. But I think, that if we received a challenge, we should allow a dangerous novelty, which would encumber the administration of justice. It is better to proceed in that course which has been established for centuries, than to give way to an attempt, made for the first time, in a matter, in which most manifestly for ages past, the instances would perhaps be almost as numerous as challenges to the petit jury, if that course was legal. I am therefore of opinion, that this challenge should not be received.

Challenge refused.\*

Saturday, November 9th, 1811.

Mr. Johnson, for the defendants, repeated the application for copies of the informations to be granted to them. He did not urge it as a matter of *right*, but of *indulgence*, and the indictments being found by the grand jury, there was less reason to refuse the motion. The statute 49. Geo. 3rd gives the officer a fee of six shillings and eight pence for a copy of an information, which recognizes the practice of granting copies.

Mr. Burne, on the same side, said, there was a distinction always made between *misdemeanors* and *capital* cases: in the former, he considered it a matter of *right* to have a copy of the informations; in the latter, it was a matter of indulgence.

Lord Chief Justice Downes.—This application is perfectly novel:—it presumes a right in the accused person to search into the evidence which is intended to be given on the part of the Crown. No prosecutor can be compelled to disclose his evidence. Even the English statute of William 3rd which gives the accused copies of the indictments in cases of high

\* By the 17th and 18th Geo. 3rd c. 45 In. It is enacted, “that no *plea* of the outlawry of a *grand juror* in any *civil case*, shall be received in avoidance of any act, or acts, to be had or done by any grand jury whatsoever.



treason, expressly excludes the names of the witnesses, which may be indorsed thereon. The Irish statute upon the same subject, gives copies of the indictments, but not of the informations, 5. Geo. 3rd c. 21. The object of this motion is, to procure the names of the witnesses, which appears to us to be an unreasonable application. It is sufficient for the accused to know the fact with which he is charged; but he is not to be armed with a knowledge of the prosecutor's proofs.

Motion refused; but copies of the indictments were granted.

*Monday, November 11th, 1811.*

Lord Chief Justice *Downes*.—I think it right to take notice of a circumstance relative to the motion which was made on Saturday last, counsel for the traversers moved for copies of the informations sworn against them, and also for copies of the indictments. We were of opinion that copies of the indictments should be granted; but we were also unanimously of opinion, that copies of the informations ought not to be granted. One ground of our refusal was, that there was no instance of forcing the Crown to give up its evidence, and that there was a legislative declaration in the statute of William 3rd\* which directs copies of the indictments in cases of high treason, but excepts the names of the witnesses, indorsed upon the back of the indictment. I spoke at the time from my recollection, and upon looking into the statute since, I find that I was right. But I also find, that by statute 7. *Anne* c. 21. the names of the witnesses are directed to be given. That statute is not in force here. I thought it right to mention this: though it makes no manner of difference as to the rule which we pronounced; nor do I see any reason to doubt the propriety of that rule.

Mr. *Attorney General*.—My lords, I now humbly move your lordships, that the persons against whom indictments have been found, may be called, in order that they may plead.

Mr. *Burne*.—My lords, we who are concerned for the traversers, are anxious to facilitate the business of the Court. Messrs. *Taafe*, *Sheridan*, *Burke*, *Breene*, and *Scurlog*, will waive their right of pleading in abatement, and are willing to abide by whatever may be your lordships' decision, in the case of Mr. *Kirwan*.

Mr. *Attorney General*.—Nothing can be fairer. These gentlemen will, of course, plead the general issue, with liberty to withdraw that plea, should the Court decide against the Crown; which liberty I undertake they shall have.

Lord Chief Justice *Downes*.—Are all the defendants in court?

The Clerk of the Crown called over their names, and they appeared.

Lord Chief Justice *Downes*.—Gentlemen, all except Mr. *Kirwan*, you will plead the general issue. But if the Court shall allow Mr. *Kirwan's* plea, you will be permitted to withdraw your traverse, and avail yourselves of the decision of the Court in his favour.

This arrangement was assented to on both sides, and Messrs. *Taafe*, *Sheridan*, *Burke*, *Breen*, and *Scurlog* traversed the indictments.

An abstract of the indictment against Mr. *Kirwan* was read.

It stated, that on the 9th of July, 1811, an assembly was held in Fishamble-street, by persons intending to procure the appointment of a committee of persons professing to exercise the Roman Catholic religion, to exercise an authority to represent the Roman Catholic inhabitants, under pretence of causing petitions to parliament, for the repeal of laws existing against them, and that Thomas *Kirwan*, intending to assist in forming such committee, on the 31st of July, 1811, at Liffey-street, did assemble with others, for the purpose of appointing five persons to act as representatives of the parish of St. Mary; that Edward *Sheridan*, M. D. was elected, and that Thomas *Kirwan* voted in said appointment, contrary to the form of the statute, &c.

Mr. *North*.—My lords, in this case, Mr. *Kirwan* tenders to the Court, three several pleas. The first is, that several of the persons composing the grand jury, hold offices under the Crown, removeable at pleasure. The second is, that several of the grand jury are not seized of estates of freehold. And the third is, the general issue, Not Guilty.

Mr. *Attorney General*.—Let the Clerk of the Crown read the pleas.

They were as follow:—

"And now at this day, that is to say, on the eleventh day of November, in the fifty-second year of the reign of our lord the king, comes the said Thomas *Kirwan*, in his proper person, and having heard the same indictment read, prays judgment thereof, and that the same may be quashed, because, protesting that he is not guilty of the supposed offences in the said indictment specified, or any of them, the said Thomas *Kirwan* saith, that the said Nathaniel Hone, said Frederick Darley, said sir William Stamer, Baronet, said Abraham Bradley King, said William Lindsay, and said James Blacker, six of the jurors aforesaid, by whom the said bill of indictment was found a true bill, at the time of their and each of their being sworn as aforesaid, upon the grand inquest aforesaid, and also at the time of their finding said bill, held and exercised,

"severally, and respectively, offices of great emolument, under our sovereign lord the king, to wit, the offices of divisional justices within the police district in Dublin metropolis, under and by virtue of a certain act of parliament, entitled an act for the more effectual administration of the office of a justice of the peace, and for the more effectual prevention of felonies within the district of Dublin metropolis, from which said offices, the said Nathaniel Hone, said Frederick Darley, said sir William Stamer, Baronet, said Abraham Bradley King, said William Lindsay, and said James Blacker, were removeable at the will and pleasure of our sovereign lord the king, and this he is ready to verify, wherefore he prays judgment of the said indictment, and that the same may be quashed.

"And for further plea in this behalf, the said Thomas, protesting as he hath above protested, saith that he the said sir William Stamer, Baronet, at the time of his being sworn upon the grand inquest aforesaid, and also at the time of finding the said bill, was not seized of any estate of freehold in the said county of the city of Dublin, and also that the said William Cope, at the time of his being sworn on the grand inquest aforesaid, and also at the time of finding the said bill, was not seized of any estate of freehold in the said county of the city of Dublin, and also that the said James Blacker, at the time of his being sworn upon the grand inquest aforesaid, and also at the time of finding the said bill, was not seized of any estate of freehold in the said county of the city of Dublin, and this he is ready to verify; wherefore he prays judgment of the said indictment, and that the same may be quashed.

"And for further plea in this behalf, the said Thomas saith, he is not guilty of the premises wherewith he is by the said indictment charged, and of this he puts himself upon the country and so forth."

*Mr. Attorney General*.—My lords, I do not

\* The third plea is not regularly pleadable at the same time with the first and second; for if these were allowed, the judgment of the Court would be, to quash the indictment, without calling upon the defendant farther, and if they were disallowed, then the judgment is, that the defendant shall answer over to the charge.

There was also an affidavit of the defendant annexed, stating, that the first and second plea were true in substance. Such affidavit was held to be unnecessary. *Sheares's case*. 16. *Note of Mr. Ridgway*. *Sheares's case* is reported 6 How. Mod. St. Tr. 255.

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mean to take any advantage of an informality in the mode of pleading on the part of the traverser. It is not regular to plead two distinct pleas in abatement; though I admit, that in one plea several matters might be introduced. I conceive, that the matter of the first plea has been ruled already by the Court, upon the question of the challenge; but I am ready to have it discussed again in the present form; I demur to both the pleas in abatement.

*Mr. Justice Daly*.—Do you demur to the plea for want of freehold? because then you admit the want of it.

*Mr. Attorney General*.—My lord, I do.

The Traverser joined in demurrer.

*Mr. Attorney General*.—My lords, I am to support the demurrer; not having been well for some time, I would prefer, with your lordships' permission, to proceed now, rather than reserve myself for the reply to the arguments on the other side. If the arguments should extend to any length, it, perhaps, might be a late hour, I should be called upon to perform that duty, and by that time, I might be utterly unable to perform it. I shall therefore leave it to some of my brethren.

I beg leave, by way of preliminary observation, to state, that as the course, in which the traversers have been advised to proceed, is calculated to convey an insinuation (I am sure it is not intended to be suggested by the counsel, who are conducting this case) that the return of this grand jury has been in any other than the ordinary way; and may impress the public mind, that any improper practices have been resorted to with regard to the return of that grand jury; it is a justice due to the government of the country; it is a justice due to myself, who am responsible for the conduct of these prosecutions—it is a justice due to the sheriff, by whom the jury has been returned, to say, in the most unequivocal manner, that it is gross and unfounded. Indeed, I might appeal to the counsel, who are conducting the case of the traversers, whether they do not hold me incapable of countenancing any improper practice whatever.

*Mr. Burne*.—We do indeed hold you to be utterly incapable.

*Mr. Justice Day*.—I have had a pretty long experience, and I can bear witness, that the present grand jury is composed of much the same persons, as I hear called every term.

*Mr. Burrows*.—My lords, I trust, it is unnecessary for us, who are counsel for the traversers, to disavow, *seriatim*, all intention of insinuating any thing disreputable to the candour and honour of the attorney-general.

*Mr. Attorney General*.—My lords, it is right in these times, to guard the public mind against abuse, which is attempted by too many.

2 P

We who are concerned for the Crown consider these pleas, as dilatory:—the traverser is entitled by law to plead them, and I would be the last person to deny him the benefit of the law:—therefore, we will consider the pleas, coolly and dispassionately, upon their merits. The traverser has pleaded double matter, in abatement of the indictment. The first is, in fact, a challenge of a grand juror, for favour; and the second is, that some of the grand jurors, named in the plea, have not any estate of freehold in the county for which they are returned. I am not disposed to do more, as to the first, than refer your lordships to the arguments, which were so eloquently and forcibly urged by the solicitor-general, upon a former day, upon which the Court decided.

Mr. Burrowes.—I expressly waived arguing that question, as it did not arise.

Mr. Justice Osborne.—I think, Mr. Burrowes, you were stopped in that part of your argument.

Mr. Justice Daly.—The opinion of my lord chief justice, of judge Osborne and myself was, that the objection could not be taken advantage of by way of challenge.

Mr. Attorney General.—My lords, I consider it so. But in deciding that question, we consider it as taken for granted, that the objection will not lie at all.

Mr. Justice Day.—I was the only judge, who held that it did not lie at all.

Mr. Attorney General.—My lord, so I understood, and I take it, that no such objection lies in point of law. The authority of lord Holt is decisive, that no such challenge lies to a petit juror, and *a fortiori*, it could not exist in the case of a grand juror. With that authority, and the arguments already advanced, I shall content myself as to the plea. If any thing farther be necessary, in consequence of what may be said on the other side, it will receive an answer from such of my brethren as will speak on the same side.

My lords, with respect to the other plea—the want of freehold—having had some apprehension, from the former course of proceeding, that the traverser might be induced to plead in abatement, in delay of the trial of the merits; I did with considerable pains and attention look into the authorities, and have fully satisfied my mind upon the subject; and if I shall be successful in communicating to your lordships the result of my investigation, I am sure you will also determine that the matter of this other plea is not maintainable in abatement of the indictment.

Your lordships will please to recollect, that the question now before the court, is, “Whether in counties of corporate cities, or corporate towns, the want of freehold is a good cause of challenge even to a petit juror.”—And if it be not, either by the common law, or by any statute, a cause of challenge to

a petit juror in counties of corporate cities or towns, *a fortiori*, it is no cause of challenge, or plea in abatement, as against a grand juror.

My lords, I am ready to concede, upon the dictum of lord Hale, where he is speaking distinctly of counties at large, that in counties at large it is necessary at common law, that the juror should have freeholds. I admit the dictum of Hale is express to that effect. It is extremely material, upon a question of this kind, to advert to the writ, by which, originally at common law and since, grand jurors have been summoned to attend. The only qualification specified in the writ, ascertaining who—and of what quality and condition grand jurors are to be, is, that they should be *probi & legales homines*; and I am ready to allow, as I believe it has been admitted in sir Thomas Raym. in Blood’s case, that *liberi* and *probi* are to be considered as synonymous. Therefore, I will take it most advantageously for the traverser. There is nothing said in the writ of frank-tenement or freehold, but *probi, et liberi & legales homines*. The argument which I mean to found upon the writ (and that is going to the foundation), is, that by the common law, the qualification of a grand juror or a petit juror was not dependent upon his property, or the value of it, but upon his condition and quality in the state—namely, that he should be, what the law called a freeman—not a villein, or outlaw—but a freeman. In counties at large, the condition of a freeman was ascertained by his tenure. If he held lands or tenements, he held in all—or almost all—cases, by tenure of freehold; for in those ancient times, tenures for years were unknown to the law; and holding by tenure of freehold, he was in right of that tenure, a *liber homo*. There was no limitation as to the amount in value; he was a freeman, though the outgoings of the frank-tenement exceeded its income, his condition was free, and he was proper to be returned as a juror.

In illustration of this, I beg to call your lordships’ attention to the first statutes, which were enacted with regard to the qualification of jurors. They throw considerable light upon the subject. The first is the stat. of West. 2. 13 Ed. 1. c. 38; and the next is the 21 Ed. 1. c. 1. “*De iis qui ponenti sunt in Assis.*” These statutes were enacted—not for the purpose of ascertaining the qualifications of sums with regard to property, or with a view to those who were to be tried by them, but to relieve jurors from the oppressions which they suffered from the conduct of sheriffs; and your lordships will find, that the hardships which they suffered from the misconduct of sheriffs, consisted in the sheriffs returning old and decrepit persons—returning persons actually paupers—oppressing the poor and favouring the rich—returning persons (to extort money) who were not resident in the county. The first statute recites. “*Forasmuch also, as sheriffs, hundredors, and bailiffs of liberties have used to grieve those which be in subjection unto them, putting in*

"assizes and juries men diseased and decrepit, and having continual or sudden disease; and men also, that dwelled not in the county at the time of the summons; and summon also an unreasonable multitude of jurors for to extort money from some of them for letting them go in peace, and so the assizes and juries pass many times by poor men, and the rich men abide at home by reason of their bribes: It is ordained, that from henceforth, in one assize, no more shall be summoned than four and twenty, and old men above three score and ten years, being continually sick, and being diseased at the time of the summons, or not dwelling in that county, shall not be put in juries or petit assizes—nor shall any be put in assizes or juries, though they ought to be taken in their own shire, that may dispend less than twenty shillings yearly. And if such assizes and juries be taken out of the shire, none shall pass in them, but such as may dispend forty shillings yearly at least, except such as be witnesses in deeds, or other witnesses, whose presence is necessary, so that they be able to travel. Neither shall this statute extend to great assizes, in which it behoveth many times knights to pass not resident in the country, for the scarcity of knights, so that they have land in the shire; and if the sheriff or his under sheriffs, or bailiffs of liberties offend in any point of this statute, and thereupon be convict, damages shall be awarded to the parties grieved, and they shall nevertheless be amerced to the king, and justices assigned to take assizes, when they come into the shire, shall have power to hear the complaints of all complainants, as to the articles contained in this statute, and to minister justice in form aforesaid."

My lords, I have read the whole of the statute; it recites the mischiefs which had existed, and enacts the remedy, that jurors shall have tenements of the yearly value of twenty shillings, thereby putting a value, for the first time, upon the tenure. If taken out of the shire, that is if taken to Westminster upon trials at bar, &c. the tenure must be of the value of forty shillings.

Then, my lords, comes the stat. 21 Ed. 1 which is remarkable in another respect, that will be deserving attention. It is commonly called the statute "*De iis qui ponendi sunt in assis.*" It is made in *pari materia* with the former, not with a view to the parties who are to be tried by the jury, but for the ease of the jurors themselves who were oppressed by the misconduct of sheriffs. "Forasmuch as our lord the king by the continual and grievous complaint of his inferior people, doth perceive that divers persons, being of least ability of his realm, are many times intolerably troubled by sheriffs, and their bailiffs, bailiffs of liberties, which impanel them to the recognizances of assizes, juries, inquests and attainments, triable out of the shires where they be dwelling; and do spare the rich people and such as be more

able, by whom the truth of the matter might be better known, whereby great expenses and trouble doth daily manifestly ensue to the impoverishment and other disheriting of many: Our said lord the king, providing for the indemnity of his people, and desiring to set convenient remedy in the premises for the public weal of his realm, in his parliament holden, &c. hath ordained in this behalf, that no sheriff, &c. shall from henceforth put in any recognizance above-said, that shall pass out of their proper counties, any of their bailiffs, except he have lands and tenements to the yearly value of an hundred shillings at the least. And the king intendeth not by this statute to restrain the last statute of Westminster, wherein mention is made of recognisers to be put in juries and assizes, but of such as only ought to pass in assizes, juries and recognizances, triable out of their proper counties; so that within the county before justices of our said lord the king, or other ministers assigned to the taking of any such inquests, juries, or other recognizances, none shall be impanelled, except he have lands or tenements to the yearly value of forty shillings; and likewise saving, that before justices errant, that hold common pleas in their circuit, and also in cities, boroughs and other market towns, where recognizances, assizes and juries or inquests do pass upon any matter touching the said cities, boroughs and other towns, it shall be done like as hath been accustomed in times passed." Recognising in this very ancient statute, that there were certain laws and usages, applicable to cities and towns corporate, which were not applicable to counties at large, and where a reformation with respect to juries in counties is provided for, there is a saving clause, retaining and preserving the former usages in corporate towns. When your lordships come to hear what I shall subsequently offer, it will go strongly to show, that there is one law with regard to counties at large, and another, founded upon reason and necessity, with regard to cities and corporate towns.

These statutes, respecting the qualification of freehold, requiring twenty shillings in one case and forty shillings in another, are utterly immaterial in the point of view in which we are now considering the subject, that is, as to challenge; for it is laid down by lord Coke, in his commentary upon the stat. of Westm. 2nd, in his 2 Inst. 448, that if any person be returned contrary to the purview of this statute, he cannot be challenged, neither can the party aggrieved allege the matter for his discharge, but he must take his remedy by action against the sheriff. So that after the passing of these statutes, the subject stood, as to the matter and right of challenge, precisely as it did at common law: and the only challenge which lay at common law, was, that the juror was not a *liber homo*, that is, that in counties at large, he had not such a tenure as constituted him a *liber homo*; but no value was necessary—he

might be a pauper; but if his condition were free, he was qualified to be a juror; and down to this period, no value is annexed to the freehold.

My lords, this may be the proper time to draw your attention to the case of cities and towns corporate, in which the crown of England had from time to time, antecedent even to the reign of Edward 1st, established corporate bodies for the promotion of trade; gave them jurisdictions, exemptions and privileges, making them counties in themselves; and in many of these corporations, if a frank tenement were a necessary qualification for a juror, there must be an absolute failure of justice: for there were not numbers sufficient to compose a jury, who had freeholds in lands and tenements. But the corporators were made *freemen* by the king's charter, and being made such, they were, give me leave to say, to all intents and purposes, within the principle and exigency of the writ, which went to the sheriff at common law, directing him to return *liberos et legales homines*. If they were made free, upon what principle could the sheriff refuse to return them as freemen? The members of the corporation were created such by the charter of the crown; they were acknowledged as such by the legislature in the stat. 21 Edw. 1st, which recognised the case of corporations, in which different laws and usages prevailed from those in counties; because the criterion of a man's being free, in a county, was his frank tenement, by which he was a *liber homo*, and the criterion in a town was his being a freeman by charter, and therefore equally within the meaning of the description, *liber homo*. The crown thought fit to make men free by charter: The power of raising and enlarging the condition of the subject, is an acknowledged prerogative of the crown; and therefore, my lords, it appears to me, considering the true principle and meaning of the writ at common law, by which the sheriff is commanded to return jurors, that the exigency of it is fulfilled by a return of *freeholders* in counties and *freemen* in cities; they equally answer the description of *liberi homines*—one by tenure and the other by grant:—the value was nothing in either case. This will go a great length indeed to prejudice the question, that is, why it was, that a frank tenement was not a necessary criterion to qualify a juror in a town; although from the authority of lord Hale, I concede, that it was necessary in counties.

My lords, if you consider, in addition to this, the necessity of the case; that in towns there must be a failure of justice, if frank tenements were necessary, it is an irresistible argument to prove, that from time immemorial, the objection for want of freehold could be no cause of challenge. The king, no doubt, frequently gave lands to the body he incorporated. But such lands formed the estate of the corporation, to whom it was granted as an aggregate body; and the freemen, who lived within the precincts of the town, and who were

to try causes within the limits of their jurisdiction, had no freehold in the lands; they derived a share of the profits, or some of them might become farmers of the estate; but in that case they did not hold as frank tenants—but as tenants at will, or bailiffs of the corporation, and therefore, if there were not this distinction between cities and counties at large, there must have been a total failure of justice in the former.

The first statute, which your lordships will find in the Statute-book, which imposed a qualification of *value* upon jurors, with reference to the parties, whose causes are to be tried; and not, as in the former statutes, with reference to the jurors themselves, is the 2 Henry 5th, stat. 2, c. 3, which requires a qualification in value of the tenement, and confines itself to three cases only, to which we beg leave to direct your attention (Co. Lit. 279); and in commenting upon this statute, expressly recognises the three cases to which it extends: it enacts, "that no person shall be admitted to pass in any inquest upon trial of the death of a man, nor in any inquest betwixt party and party in plea real, nor in plea personal, whereof the debt or the damage declared amount to forty marks, if the same person have not lands or tenements of the yearly value of forty shillings above all charges of the same; so that it be challenged by the party, that any such person so impanelled in the same cases hath not lands or tenements of the yearly value of forty shillings above the charges, as afore is said." That statute, it appears, was construed to extend to corporate cities or towns; consequently, after that stat. of 2 Hen. 5th, but certainly not before, it was considered to be a good cause of challenge, in cities and towns, in the three cases specified, that a juror had not a freehold of the value of forty shillings. But all other cases except those three, all criminal cases short of felony, and civil cases under forty marks, stood exactly as they did at common law. But, this statute having been construed to extend to cities, was productive of much inconvenience, there not being a sufficient number of freeholders in cities and towns to try such causes, and the consequence was, a failure of justice in these inferior jurisdictions; in order to remedy this mischief, the stat. 23 Hen. 8th, c. 13, was enacted in England, and it furnishes an almost irresistible argument upon the present question. It recites, "that forasmuch as trials in murders and felonies in cities, boroughs, and towns corporate, within this realm (having authority to proceed, &c.) had been oftentimes deferred and delayed by reason of challenge of such offenders, for lack of sufficiency of freehold, to the great hindrance of justice, thereupon it is enacted, that every person and persons, being the king's natural subjects born, which either by the name of citizen, or of a freeman, or any other name, doth enjoy and use the liberties and privileges of any city, borough, or town corporate, where he dwelleth,

"or maketh his abode, being worth in moveable goods and substance to the clear value of forty pounds, be admitted in trials of murders and felonies, in every session and gaol delivery to be kept and holden in and for the liberty of such cities, boroughs, and towns corporate, *albeit they have no freehold*, any act, statute, use, custom, or ordinance to the contrary hereof notwithstanding."

Therefore, your lordships see, that in cases of murder and felony, the legislature relieved cities and towns corporate from the grievance affecting public justice, which was occasioned by construing the stat. of Hen. 5th, to extend to them, and this furnishes a perfect demonstration, that by the common law the objection for want of freehold would not lie in cities and towns. In cases not within that statute, that is, all cases short of felony, and civil cases where the debt was under forty marks, the same failure of justice must have existed, if the challenge for want of freehold were allowed, and if that were the case, would the legislature, in the reign of Hen. 8th, confine the remedy to cases of murder and felony only, and omit to relieve public justice from the embarrassment and delay that must necessarily have arisen, if the party were at liberty to challenge in all other cases, not within the stat. Hen. 5th? And therefore, my lords, this furnishes a decisive proof, that the qualification of freehold was required in *counties at large only*, and not in corporate towns, and that a public mischief arose in the latter from the construction given to the stat. Hen. 5th (prior to which it must be admitted it did not exist), and the stat. of Hen. 8th enacted the remedy.

Mr. Justice Osborne.—Is that statute enacted in this country?

Mr. Attorney General.—No, my lord, it is not; but for the purpose of my argument that is immaterial, because the present is a case not within the statutes of Hen. 5th. I have grounded my argument upon the qualifications of a juror at the common law; that in counties at large; it was his condition, arising from his tenure; and when the crown made freemen, *eo nomine*, in towns, it gave them by charter, that quality and condition, which a freeholder in a county acquired by his tenure. Therefore, my lords, I have argued this case upon the principles of the common law, upon the true interpretation of the writ, upon the necessity of the case, showing that there must be a failure of justice, if the law as to frank tenement were the same in towns as in counties at large; and I have fortified my argument, by referring to ancient statutes, which recognise the distinction, and which has been recognised by every subsequent statute upon the subject. If I rested there, I think that I should have the opinion of the Court with me, that the want of a frank tenement in a city is no cause of objection to a juror. But I come now to an authority, in addition to those principles, which give weight to the decision, for a case

unsupported by principle has little weight. But if we find a decision of grave judges, upon a point directly before them, not altered or affected by subsequent decisions, the Court will have every thing enabling them to decide against that which goes to delay justice and work a failure of it, which would be the consequence if this challenge were admissible in cities and corporate towns. The case, to which I allude, is in *sir Thomas Raym. Rep. 484*, the *King v. Higgins*. It was decided in Hil. 34, and 35 Car. 2nd, when chief justice Saunders presided, and a greater legal authority never sat in Westminster-hall. It was a trial at bar, and was an information in nature of a *quo warrant*, exhibited against certain persons, being citizens of Worcester, for exercising certain franchises within the city. There were several issues joined upon the record, and upon the trial at bar, the counsel for the defendants took a challenge to the polls, *because the jurors had not any freehold within the city*; and the reporter states,—“this challenge was debated by all the four judges, and it seemed to them all, that it can be no good challenge, because the stat. 2 Hen. 5th, c. 3, doth not extend to this case, for that is only in causes between party and party, nor doth 35 Hen. 8th, c. 6, reach thereto, because that statute cannot extend to cities and corporations, but to sheriffs of counties at large; for if a panel made in corporations must have freehold jurors, they must have likewise six hundredors, which cannot be in any corporation in England, and so 27 Eliz. c. 6. But the jurors of corporations are to be at the common law, and though it is said 3 Cro. 413, in *Blunt's case*, that there ought to be some freeholders, that cannot be intended in corporations, for in some corporations there are no freeholders at all, and so justice would fail; and by constant practice in all trials at Guildhall, London, by *Nisi Prius*, no such challenge was ever made or allowed, and therefore it would be very mischievous after so long a practice to the contrary to admit the challenge: and yet nevertheless, because the counsel for the defendants were not well satisfied with this resolution, I was desired by the other judges of the court to know the opinion of the judges of the court of Common Pleas, and I discoursed with them, and propounded the challenge to them: and Pemberton, chief justice, Wyndham and Charlton (*Levinz being absent propter agritudinem*), did clearly concur with us, and I returned their answer so to the Court.” So that here, your lordships have the opinion of seven judges expressly upon the very point, reported by one of those very judges.

After the revolution, the statute of Will. and Mary was enacted respecting the qualifications of jurors. It was stated in the Bill of Rights, that mischiefs arose in cases of treason from want of freeholders, and it was enacted, that in cases of treason, jurors should have a freehold of 10*l.* per annum. But there is an ex-

press exception of cities, boroughs and towns corporate; and in *Laver's case*\* and *Francis's case*,† which were subsequent to that statute, a challenge was taken for want of freehold to the value of 10*l.* in London, that challenge could be founded only on the statute then lately passed, which was a popular one and made in derogation of the conduct of the former government, and yet, clearly, it could not be supported as a challenge in London under the statute; the objection was not allowed as valid, but it appears, that both parties agreed, that all the jurors should be freeholders. Therefore there was no decision upon the subject, and these cases cannot be considered as any authority whatever, and if any thing were said in favour of the challenge, it would be in direct opposition to the statute.

There is nothing to decide this question in our jury acts. But every statute upon the subject of juries uniformly recognizes the distinction, founded in law, necessity and reason, between the case of corporation towns, and counties at large.

My Lords, if any thing shall be said on the other side, which shall raise a doubt in the mind of the Court, my colleagues will be ready to give a satisfactory answer. But it appears to me, perfectly clear, that the usage and practice that have prevailed, have been consonant to the principles of the common law, and not contrary to any statute; and that by over-ruling this plea, you will sustain the ancient practice and usage, which are conformable to the law of the land.

*Mr. North.*—My Lords, with my limited experience, I cannot but feel considerably embarrassed, in rising to reply to the great legal learning, and consummate ability of the attorney-general;—and that embarrassment, I confess, is not a little increased by the preliminary observations, with which he has thought proper to introduce his argument. In answer to those observations, I may confidently affirm, for myself, and for my colleagues, that we had not the remotest intention, in the course which we have adopted, of ascribing to the attorney-general any motives which might seem to derogate from the high character and estimation he so deservedly possesses with the public. We have deemed it, however, in a great cause like the present, affecting the best and dearest interests of the country, an indispensable duty, to satisfy the nation, that the proceedings in every stage, have been conducted according to the strict principles of the law, and that as they are, I trust, free from taint, so they may be also exempt from suspicion. I could wish, my lords, that these remarks might have been dispensed with. They would have fallen, perhaps, with a more becoming grace, from counsel senior to myself. Henceforward, however, I shall confine myself to the legal argument, my better and more appropriate province.

Mr. Attorney General has applied himself chiefly to the second plea; with this, therefore, I shall begin. The authorities requiring, that grand jurors shall be freeholders are numerous and direct. The first I shall cite is of the very highest description, derived from those forms of the law, which, it has been well observed, are the best indications of the law itself. The ancient precept to the sheriff for summoning the grand jurors, requires that they shall be men possessing a certain estate of freehold. It is thus cited by Crompton, f. 212. a. “*Venire facias viginti quatuor liberos et legales homines, de quolibet hundredo in ballivâ tuâ quorum quilibet habeat 40*s.* per ann. liberi tenementi ad minus,*” and so on. The next authority, I shall submit to your lordships, is sir Matthew Hale. This great judge, and admirable writer, speaking of the grand inquest, has the following passage, 2 Pl. Cr. 155. “*Touching their annuus census, I do not find any thing determined, but freeholders they ought to be.*” The style and manner of this passage are worthy of attention. They show, that lord Hale was not writing from habitual knowledge, or general impressions—they imply, that he was peculiarly alive to his subject—reviewing his old opinions—fixing a wavering and undetermined judgment—and applying the full resources of his powerful mind and of his ample information to a new and final investigation of the question. He enters into both branches of his inquiry and with his accustomed candour, acquaints us with the result of his researches in each. On the first head, he confesses, that his diligence was disappointed—he could obtain no satisfaction. “*Touching their annuus census he could find nothing determined.*” On the other, however, he could speak with perfect assurance, “*freeholders they ought to be.*” His diffidence and caution, where there is room for doubt, entitle him to our entire credit when he delivers his opinion with confidence. There is one only authority in the law, which can be put in competition with lord Hale, and this authority is with me. Lord Coke in enumerating the challenges to jurors, “*propter defectum*” (Co. Litt. 156. b.), declares one of them to be “*propter defectum annui census, i. e. liberi tenementi.*” It may be replied, to be sure, that this refers only to the petit jury; but that actually strengthens the argument. If it has been thought proper to secure, by legal qualifications, the respectability of the petit jury, it is natural to expect, that these qualifications should be required in a still higher degree for the grand jury.

But, perhaps, the attorney-general intended to concede the general rule, and to rely altogether on the exception which he has attempted to make out for cities and towns corporate. The attorney-general has argued from authority and reasoned from a long series of statutes, and a supposed obstruction of justice if freeholders should be required in cities. To begin with the statutes. They are all ancient: The first is the 21st Edw. 1. *De iis qui ponendi sunt*

\* 16 How. St. Tr. 93.

† 15 How. St. Tr. 897.

in assizes. There is a writ founded on it in the Register. It requires an increase of property in jurors, with a saving, "that in cities, boroughs, and other towns, may be done, as hath heretofore been accustomed to be done." That is, that in cities, boroughs and other towns, the old rate of property shall be observed, and not the new. An increased qualification was the object of the enactment; therefore, it must be the subject matter of the exception, unless it shall be contended, that a proviso may save from the operation of an enactment, what never was exposed to it and take out of its limits that which never fell within them. This exception then respects only the *quantum* of the freehold, which is not increased in the towns, as it was thought necessary to raise it in the counties. And this was a very natural provision in the infancy of commerce, when the cities were poorer, than the country. The same answer is applicable to all the other statutes, which the attorney-general has quoted. They are all to the same effect. From time to time, they increased the amount of property required in a juror, sometimes excepting, and sometimes not, jurors in cities and corporate towns. As to the attorney-general's argument, from a supposed obstruction of justice, if jurors in cities were required to be freeholders, he has himself furnished me with an answer to it. He cites 2 Hen. v. c. 3. enacting, that in particular cases there specified, jurors in cities shall be freeholders, possessing property to a certain amount; has the legislature then ordained an impossibility, and enacted an impediment to justice? Nor do I admit the unfair influence, drawn by the attorney-general, from the statute, that this qualification for jurors was not required by the common law. He should have observed, that this act was partly affirmative, and partly remedial; so far as it requires, that jurors shall be freeholders, it is declaratory of the common law—so far as it makes necessary an increased qualification of property it is remedial; in the same way with so many statutes that went before and that succeeded it.

But, my lords, the attorney-general comes to adjudged cases. He has cited with confidence the case of the city of Worcester, and has endeavoured to raise its authority by an eulogy of chief justice Saunders. Surely, my lords, it is not from the name of chief justice Saunders that this case can derive any additional weight. How did he come to have a voice in this decision? What was his title to pronounce an opinion upon this question? When this judgment was given, he was not yet firm in that seat, which had been just left by a sound lawyer and an upright judge. Chief justice Pemberton was removed from the King's-bench, because he would not assent to the illegal and unconstitutional measures meditated on the trial of Algernon Sydney; and who was the ready and convenient tool that was substituted in his place? It was my lord chief justice Saunders. His name, therefore, was the last I

should have expected to hear relied upon in a question between the crown and a subject. But why did not the attorney-general cite lord Russell's case? He would have found the point ruled with him there also. These cases, my lords, were once the subject of very close examination. Sir John Hawles, in his admirable review of them (4 St. Tr. 169.)\* has refuted every principle, on which they were determined. He has particularly noticed this pretence of an obstruction to justice in cities, if jurors were required to be freeholders. He exposes the absurdity of the argument in the cities of London and Westminster, which had been from the earliest times the residence of the greatest landholders in the kingdom, and his reasoning, I think, will lose nothing of its force, when it is applied to the present state and former history of the Irish metropolis. But, my lords, beyond all this, the determinations, in these cases, have been over-ruled by an express declaration of the legislature in the Bill of Rights, and 7 W. 3. c. 3. On this second plea, therefore, I shall trouble your lordships no farther.

The Traverser's first plea is, that the grand jurors hold offices of emolument, from which they are removable at the pleasure of the crown and therefore "stand not indifferent as they stand unsworn." The purity of grand juries has ever been an object of high importance with the English law. A very severe statute has been enacted for its security, 11 Hen. 4. c. 9. It has been protected by the solemn sanction of an oath, and the highest authorities of the law pronounce a perfect indifference of mind to be an indispensable quality of an indictor. Lord Coke, (3 Inst. 32.) in treating of petit treason, takes occasion to digress on the constitution and offices of the grand inquest, and has the following strong, and I think decisive passage:—"All indictments, for any offence whatsoever, ought by the common law "of the realm to be by persons duly returned, "and by lawful liege people, indifferent, as "they stand unsworn." Indeed, from the reason of the thing, the integrity of a grand jury requires stronger guards, and greater security, than that of a petit jury. They hear but half the evidence—there is nothing to counteract the first unfavourable impression. Again, they are not the final tribunal—a man of infirm virtues yields to the temptation of being half unjust; distinguishing between the indictment and conviction, he extenuates his offence, by the consideration, that he decides not upon the guilt, but the imputation; he consoles himself with the expectation that another jury will interfere betwixt the charges and its consequences, and is bold enough to visit with the reproach, where he dares not to visit with the crime.

But, my lords, the Attorney General attempts to alarm and overawe us, by the indecorum and indecency of supposing, that a

\* How. St. Tr. 793.



subject can be corruptly influenced by the king. A dazzling sophism, a splendid fallacy! True; the source of this influence is, indeed, pure and unpolluted. To presume it otherwise is more than indecorous and indecent. It is illegal and unconstitutional. But the influence of the crown finds its way to the subject through many mediums. To him it is derived through a long and corrupt channel, and it gathers in its course, the vices of every soil through which it flows—until the sovereign's authority, exerted, in the first instance, only for the noble purposes of impartial justice, at length, perhaps, becomes known to his subjects in the caprices, the intemperance, the prejudices, and the passions of the meanest and most unworthy of his servants.

The argument of the Attorney General operates in my mind, an effect directly the reverse of that which it is intended to produce. As he extols the dignity, as he heightens the attributes, as he enlarges on the qualities, as he reveals the full splendor of majesty, I grow more and more alarmed; I tremble for the integrity of the juror, and for the safety of my client. Nor are my apprehensions diminished, when he villifies and degrades the character and situation of the traverser. I confess, on the contrary, my fears increase, lest the accused should suffer from so unfavourable a comparison, and be injured by so painful a contrast. I am only the more anxious to secure the grand juror's purity. In circumstances like these, his integrity should be fortified with walls of brass. But when you add to all this, a direct interest disturbing the fair exercise of an impartial judgment—gratitude for favours received, expectation of favours to come, dependency of present fortune, and hope of future emolument; how can you expect, that they will not totally warp the reason and obscure the candor of the juror? Such a biassed juror will listen to no witnesses, but his hopes and his fears. The pleasure of the crown will enforce, exaggerate, and amplify all the evidence against the subject.

If this important question is to be decided by the law of challenge, there is no doubt in the books, that a challenge is good against a vadelet of the king. The only question is, respecting the form of the challenge, whether it should be a principal one, or to the favour only. Lord Coke inclining to the first opinion, and Lord Hale to the last; but this cannot arise upon the present occasion; your lordships having decided, that in the case of a grand juror, the remedy is by plea in abatement, and not by challenge.

But supposing, that the common law was against us; that it was as strong with the Attorney-General, as we conceive it is with us; yet there is a positive statute, within the equity of which the case of my client comes: it is the 11 Hen. 4 c. 9. It provides for the purity of grand juries; it recites, that "because of late, inquests were taken at Westminster of persons named to the justices, without due re-

turn of the sheriff, of which persons some were outlawed before the said justices of record, and some fled to sanctuary for treason, and some for felony, there to have refuge, by whom, as well many offenders were indicted, as other lawful liege people of the king, not guilty, by conspiracy, abetment, and false imagination of other persons, for their special advantage and singular lucre, against the course of the common law, used and accustomed before this time," It is enacted, that indictments so made shall be held void. The persons described in this statute are given, by the legislature, as instances of jurors who were not indifferent, and exemplifying the general rule, that no man shall be returned upon the grand inquest, of whose impartiality there is any suspicion. Are we then not within the equity of this statute, when we shew, that there is a strong suspicion attaching upon these jurors; that they cannot be indifferent, being the immediate servants of the prosecutor, and depending upon him? The objection applies with as much force as if the prosecutor had required, that particular persons should be returned upon the jury: the independence of the juror is gone, and he cannot present as he is sworn to do, "without fear, favour, or affection."

But we do not rest so much upon that—we rather rest upon the common law, that the non-indifference of the juror is a ground of objection in all cases; it is similar to the familiar instance where the juror stands in a degree of consanguinity to the party in the action; is his agent, or otherwise his servant, he is rejected at once. There can be no stronger analogy to show, that the cases are parallel. These grand jurors who are named in the plea, are the servants of the crown, at whose pleasure they exist—their hopes or their fears are kept playing before them, and their capacity for impartial judgment is destroyed.

I shall not trouble your lordships farther upon the general principles of the ancient common law, as I have stated them from the oldest and best authorities, that it is necessary that a grand juror should have a freehold; the amount in value has been the subject of statutory regulation upon different occasions, not dispensing with, but recognizing the original common law qualification. Again, my lords, we rely, "that the grand juror should stand indifferent as he stands unsworn;" which cannot be, where he is a dependant upon the crown, holding by precarious tenure. We submit, that both pleas are supported, and I rely with confidence upon the judgment of the court.

Lord Chief Justice *Dowdes*.—This case has been extremely well argued indeed. The counsel for the crown are entitled to the last word, and therefore, if the counsel for the traverser have any further arguments to offer, they will now proceed. We call upon them

mean an adherence to the rule; not that we mean to undervalue what we have just heard.

Mr. Gould.—In rising to address the Court upon a subject, at once, novel, difficult, and interesting, it is impossible to conceal, that I feel considerable emotions of embarrassment; an embarrassment, not diminished by the dazzling display of eloquence, which we have just witnessed from the gentleman, who has preceded me. He has shown to the Court, to the bar, and to the great body of the public, a rare exhibition of talent, an uncommon assemblage of qualifications—he has displayed a vigour of understanding, a justness and accuracy of thought far beyond his years. I congratulate the young gentleman, that he has overstepped the slow and painful progressions, which are used to characterise forensic success. He has prematurely burst into the full blaze of meridian day, and by the brilliancy and steadiness of his light, has illuminated the cause and the country of which he is so distinguished a member and ornament.

My lords, if I were counsel on the other side, I certainly should consider it my duty to caution even this grave Court against the most powerful of all fascinations; the fascination of modest and unassuming genius. I am confident, that it will be a consolation to the present generation to know, that in this *once kingdom*, the rights of the subject are not likely to suffer any serious or permanent infringement, when the cause of freedom is seen to have for its advocates, the zeal of virtue, and the splendor of genius; nor can the citadel be said to be in much danger, when the out-works are guarded by such centinels as those.

I remember not any case, so exceedingly important and interesting as the present. It cannot be forgotten, that the great majority of the country feel themselves involved in it; and whatever may be the fate of this branch of it, thank God, the main question on which so much depends, must be ultimately determined by that tribunal, which at this awful moment, cheers the friends of freedom, and appals the friends of despotism; a tribunal within whose entrenchments stand safe and secure the menaced rights and liberties of our country.

Before I proceed to examine the arguments of the attorney-general, I must observe, that in putting in those pleas of abatement, motives have been attributed to the traversers, which do not exist. They have been charged with wishing to procrastinate, unnecessarily, the decision of a great question. They are guiltless of such a charge. It was at my suggestion, and by my advice, that, on the first day of this term, the challenge to the grand jury was taken. I avow, that I was one of those, who advised the pleas in abatement; and why? Because I thought it essential to the validity of any judgment, which may hereafter be pronounced, that every stage of the

proceedings should not only be without taint, but should be above suspicion. Because I felt it to be of the last importance, that the great body of the people should have no legitimate grounds for disputing, or doubting the justice and purity of those proceedings. It did strike me, that a grand jury, composed of placemen removable at pleasure, was not such a tribunal, as would satisfy the public, in a cause so novel and interesting; a cause in which the administration of the day had (as it were) preferred a bill of indictment against a whole people. I did feel, that the indictment, framed as it is, should have been found by a pure and uninfluenced jury. As a member of this great community, interested in the preservation of its remaining rights and privileges, I felt it to be of vital consequence, that a charge (connected as it is, more or less, with the subject's right of petition) should have had, at its outset, the advantage of pure and uninfluenced discussion. If there be a responsibility in that advice, I shrink not from it. The case will be met, and will be met fairly and boldly; and if any man connect with the present form of proceeding any principle of procrastination, or alarm, he mistakes the character of a cause, which to be victorious, requires only to be known.

No objection has been taken to the form of pleading; the demurrer admits all the facts, which have been well pleaded, and prays the judgment of the Court, upon the ground of some insufficiency in the plea.

Your lordships will feel that I am not placed in such an advantageous position as if I had heard the arguments of the attorney-general. I lost that advantage, by being called into the Common Pleas during his argument.

My lords, I pray you to have in recollection, that you have already decided, that no challenge lies in any case to a grand juror. It therefore follows, that whatever objections do lie to a grand juror, such objections can only be taken advantage of by plea in abatement. Now I take it to be a settled rule of the common law, that every juror, without any kind of distinction, whether grand or petit, should be a freeholder. If the crown thought proper to avail itself of any alleged exemption in the particular case, the counsel for the crown should have pleaded such exemption; they should, according to their argument, have applied in this case the charter of Dublin, to shew the privilege which is claimed, in derogation of the common law; then we could have rejoined and come to an issue upon it; or demur, so as that the Court might be able to pronounce judgment upon the facts disclosed upon the record. But, by the present mode of proceeding, your lordships are left completely in the dark, and you are called upon to say, that in this county, for it is a county, no freeholder is necessary, but that *freemen* are sufficient. Does it appear by the record now, whether the juror is a freeman? The matter should have been pleaded with proper averments. It should appear upon the

record, that the city of Dublin is a chartered corporation, and that the jurors objected to are freemen, and so pray judgment. But, as the matter stands at present, all that appears is, that two of the grand jury of the county of the city of Dublin are not freeholders, and for aught that appears are not freemen. Have your lordships any thing to shew you, that this question can be decided with satisfaction? Is it not quite obvious, that by allowing the demurrer, you may suffer an indictment to stand which may have been found by men neither freeholders nor freemen? I took a challenge to the favour, supported, as I thought I was, by authority. I do not complain of the judgment which was pronounced by the court. But the counsel for the crown were aware, that we meant to avail ourselves of the objection by *plea*. Then, why leave the court in this awkward predicament, without its appearing upon the record whether the juror be a freeman or freeholder? From what appears by the record, are the court aware, that this is a corporation charter? They call it the *City of Dublin*. What the corporation is, whether it be composed of mayor, aldermen and freemen, or bailiffs and burgesses, or what its constitution, does not appear. But supposing by way of argument, that I am able to throw into doubt the proposition of the attorney-general; that it is not so clear as he states it; ought not the benefit of that doubt be given to that side which has not engendered the doubt, but which has stood upon the well known and ordinary principles of the common law? By disallowing the demurrer, or by allowing liberty to withdraw it and to plead, the court will do no more than give a fair opportunity of putting such matter upon the record, and may furnish sufficient materials for a sound and satisfactory decision.

I have looked into the authorities on the subject, and feel that they preponderate to our side of the question. When I speak of lord Hale, I mention a name which is never heard by a lawyer but with respect and veneration; and if he excelled in any department of the science, it is in that which is now under consideration. In no instance has his name been mentioned with less than absolute authority. The passage cited by Mr. North, I will beg leave to refer to, with some farther observations. The effect of a judgment on the demurrer in favour of the subject, would be to quash the indictment altogether—although upon the record the objection is made only to *one* out of twenty-three, yet if the objection be valid, the *whole* proceeding is void. In page 167, it is distinctly laid down, that if there be an exception to *one* of the grand jury, it vitiates the *whole* array. Then see what he says with regard to *freehold*—writing expressly upon the subject, with the common law and the statutes before him. “Touching their *annuus census*, I do not find any thing determined, but *freeholders they ought to be*. The stat. of 2 H. 5. cap. 3. that requires

“jurors that pass upon the trial of a man’s life, to have 40s. per. annum freehold, hath been the measure by which the freehold of grand jurymen hath been measured in precepts of summons of sessions.” What is the meaning of this expression “hath been the measure?” He found no direction as to the *quantum* of freehold, and therefore he says, it has been the *usage* to regulate it by the measure stated in the statute, and I never can imagine, that lord Hale would state a freehold to be necessary, and that we should be told here it is not necessary. But if the authority of lord Hale wanted any support from the opinion of more modern judges, hear what Blackstone says upon the same subject. In 4 Com. 302—he entertains the same opinion, and distinctly says, that “freeholders they *should be*,” and the only difficulty, or doubt which existed has grown out of the *amount* of the qualification, but not from the want of it altogether. Hawkins states the doubt of Hale, and carries it still farther, 2 Hawk. c. 25. s. 19, 21. He mentions a doubt, whether freeholders were necessary—he was a laborious compiler, and certainly entitled to very great respect—upon looking into the cases cited by him, we find one, where a challenge was taken, because the juror had only a freehold to the amount of 15s. and it was over-ruled, because he was a *freeholder*.

In 2 Rol. Abr. 648, l. 26. it is laid down, that before the stat. of Hen. 5. any freeholder was sufficient, and so the case of sir Chris. Blunt was ruled accordingly. In 2 Hale 272. there is a note, to which I beg to refer—the passage in the text is—“By the statute of 2 H. 5. cap. 3. no man is to be admitted in any inquest upon the trial of the death of a man, unless he have lands or tenements of the value of 40s. per annum above all charge, if he be challenged.” The note is, “That is to say, in *capital* causes—this statute was introductory of a new law only with respect to the quantum of the freehold, for by the *common* law it is requisite, that a juror should be a *freeholder*; so that though this statute be repealed by the general words of 1 and 2 P. and M. c. 10, as to treason, yet some freehold was still necessary, and so it was allowed in Fitzharris’s case by Pemberton, C. J. 3 St. T. 263.\* notwithstanding, it was ruled otherwise in the case of lord Russell,† by the same judge, 3 St. Tr. 634, and in the case of colonel Sydney‡ *ibid.* p. 776. which last resolutions were declared to be illegal by several acts of parliament.”

But, supposing this privilege now claimed for *freemen* of cities to exist at common law, which we deny, upon what part of the record does it appear? And if the record be defective, whose fault is it? To entitle a man to an exemption, he is bound to bring himself within

\* 8 How. St. Tr. 330.

† 9 How. St. Tr. 577.

‡ 9 How. St. Tr. 817.

the limits of it; not by surmises and conjectures, but by setting forth all the circumstances, with proper averments, by means whereof the court can be enabled to pronounce a competent adjudication. Therefore, in my judgment, there is nothing, either in the common law, or in any statute, which makes it necessary for the court to take judicial notice of the corporation of Dublin. There is such a privilege with regard to the city of London, whose customs may be certified by the recorder, but that is the only corporation that I know of, which possesses such a privilege.

It is said by the attorney-general, that all that is requisite, is, that the jurors should be *liberi homines*, and that those words mean freeholders in counties, and freemen in cities. If that were the case, nothing more would be necessary in the writ, than the words *liberi homines*; but it goes on to say, "having such a tenement," and therefore, all the precedents being uniformly of this description, form in themselves no mean argument in favour of an exception, and furnish in my judgment a tolerably strong denial of the attorney-general's definition of the words "*liberi homines*," in the writ. And taking the course of the common law—reviewing the several statutes upon the subject—attending to the observations which have been made upon them—observing the uniform tenor and language of the writ—the necessary corollary is this:—that to be a grand juror a man ought to be a *freeholder*. It is manifest, that this qualification is absolutely requisite in counties, and the court is now called upon by this demurrer, and by the magic of the name of the city of Dublin, to overturn the rules of the common law, and to grant by way of surmise, all the effect of privileges, which are neither claimed, nor stated by this record.

My lords, if they had replied with proper averments, the matter might be tried by a jury; but by this demurrer, the facts in the plea are admitted, and no new fact can now be introduced to contradict them.

The challenge which was originally taken, was, as I said, taken by me; and I say, with sincerity, that it was not my intention to throw upon the sacred majesty of the crown, any disrespect whatever. But when I am retained by the subject, who confides his interests to my care, I cannot stand upon punctilious ceremony:—it becomes my duty to assert the rights of the subject, even against the sacred character of the crown. I came prepared to support the challenge by authority, that if it was wrong, I could shew my justification, and it is no small source of gratification to me, that an eminent member of this court, much versed in every branch of the criminal law, has differed from the majority of the court, and has given it as his opinion, that a challenge will lie to a grand juror.

I shall now, my lords, make a very few observations on the nature of the second objection relied on by the plea. Mr. Sergeant Hawkins says, that a challenge to the favour

lies for the king, 2 Hawk. 589, but not against him. What is there, that exempts the king from a challenge to the favour? As an universal proposition, it is only necessary to state it, to expose its absurdity—a proposition so slavish, and so unjust, could only have been engendered by bad times; such a proposition, so broadly stated and without any qualification could owe its existence only to that subservient courtesy, by which the grandest rights were sacrificed to the meanest expedients—such a proposition flourished at a season when prerogative was every thing, and the rights of the subject were nothing. See what the reason assigned is—"because every one is bound by his allegiance to favour the king more." Then he goes on, "but if no more be meant by these books, than that such a challenge is not good without shewing some actual partiality in such sheriff or juror, or some particular cause, in respect whereof the king may influence them, it seems not clearly settled. how the king in this respect hath a greater privilege than the subject, which yet it seems agreed, that he hath." Hawkins himself questions the reasonableness of the old notion, and admits the validity of the objection, if particular cause be shown, by which the juror may be influenced. Shall I then be charged with indecency to the crown, in calling for the judgment of the Court, whether a man shall be accused of a crime, of which, he not only says he is innocent, but contends for it that there is not even ground for suspicion—am I not warranted in demanding that so many police magistrates shall not be impeached upon the grand inquest, in a case where the crown prosecutes, by the attorney-general, an obscure humble individual? Every branch of the proceeding in such a cause should be *omni exceptione major*—that whatever may be the fate of it, it may be useful to the crown—useful to the accused, and—what is of infinitely more value—useful to the great body of an agitated community. I did think, that Hawkins was right in stating, that the subject was entitled to such a privilege. I am corrected, and I bow to the opinion of the Court, with sincerity and unfeigned respect. I thought myself farther justified by the reasoning in Mr. Hargrave's note, in Co. Lit. 158, note 5. Lord Coke says, in p. 156, a. "Where the king is party, one shall not challenge the array for favour, &c. because in respect of his allegiance, he ought to favour the king more. But if the sheriff be a vadelet of the crown, or other menial servant of the king, there the challenge is good." Mr. Hargrave in his note upon this passage, says, "Lord Coke having immediately before expressed, that the array should not be challenged for favour against the king, he must be here understood to be considered being a vadelet; or other menial servant of the crown, as a principal challenge to the array, for otherwise he would be inconsistent; unless, indeed, he is supposed, in the first instance, to state a ge-

"neral rule, and in the second an exception to it, which, as his words are, would be a strained construction."

With regard to Hampden's case,\* in which such a challenge was over-ruled, it is only necessary to direct the attention of the Court to the dialogue between chief justice Jeffries, and Mr. Williams. The latter was a great lawyer, and he took this very objection, that one of the jury had an office in the forest. How then stands the argument? you, my lords, have decided that no challenge can in any case lie to a grand juror. The purest member of society may be indicted upon the oaths of a grand jury, against whom might be produced reasons of conviction for perjury. The subject has no remedy but by plea—and it is now contended, that no freehold is necessary, and that, in a case where nothing appears upon the record to entitle the crown to any exemption or relaxation of the ordinary requisites of the common law—and it is also contended, that although the juror be the servant of the crown, or favourable to the crown—yet it lies not in the mouth of a subject to make an objection, which it is alleged, is as illegal as it is indecorous.

With regard to the parties themselves, the times in which we live, the country we inhabit require more than ordinary circumspection in these proceedings. It is my decided opinion, that the traversers in what they have done (I mean with reference to the charge against them) are not only right in point of law, but that it was their duty to see, that in this great prosecution, which is carried on avowedly by the attorney-general, at the instance of the crown against a subject, and in which seven-eighths of the Irish people feel interested, should be examined by grand jurors, against whom there lay neither legal, nor moral objection; and I foresee, that if the demurrer be disallowed, there will not be found in the city of Dublin, a grand jury, who, upon examining and cross-examining the witnesses for the prosecution, could be of opinion as the indictment now stands, that my client should even be put upon his trial.

Adjourned.

Tuesday, 12th November, 1811.

Mr. *Burne*.—My lords, before Mr. *Townsend* goes on, I think it right to inform your lordships, that Mr. *Perrin*, in the course of his researches yesterday evening, has discovered an act of parliament, which may illustrate the subject, if your lordships will please to hear him.

Lord Chief Justice *Downes*.—It was understood, that the counsel for the traversers had closed their argument, and that the counsel for the crown are now to reply; yet we will

not refuse to hear the gentleman, if he has any authority, or act of parliament to mention, as bearing upon the question.

Mr. *Perrin*.—My lords, I have met with an act of parliament, which appears to me applicable to the present question. It is 23 and 24 G. 3, c. 52, s. 47. It is intitled, "An act for better regulating the police of Waterford," and the 47, s. recites, that it had been found "that a sufficient number of freeholders cannot be easily had in said city, qualified to act as jurors, &c." and that there were a number of wealthy citizens, who had not freeholds; and it enacts, that want of freehold shall not be a legal or sufficient challenge; this peculiar exemption, in favour of the city of Waterford, shows, that in every part of the country, freehold is a necessary qualification of a juror, and consequently was so in Waterford, prior to this act.

Mr. Justice *Day*.—That statute applies only to cases between party and party, and not to criminal cases.

Mr. *McNally*.—There is a still stronger act relative to the town of Galway, 4 Geo. 1. c. 15, s. 1 and 2, by which it is enacted, that the sheriffs of the town of Galway may issue their summonses to any Protestant freeholder, having forty shillings a-year in the county of Galway to attend and serve on any grand, or petit jury, for the trial of issues depending in said town of Galway, in any plea of the crown, whether capital or not, &c. The stat. 12 G. 1, c. 4, s. 16, requires the sheriffs to return the grand panel to the quarter sessions, containing the names of all the freeholders, having freehold lands of the value of forty shillings by the year. This is a proof that the legislature considered freeholders as the only qualified jurors.

Mr. *Townsend*.—My lords, in this case, I am concerned on behalf of the crown, and it is my duty, if I can, in reply to the arguments which have been advanced on the other side, to satisfy your lordships, that the demurrer should be allowed. In the course of my argument, I shall take notice of the acts of parliament which are now referred to. But before I enter into a discussion of the general question, it may be necessary to take notice of some objections, which have been made, though not much relied upon, as preliminary to the inquiry into the main question. It was asked, why do you demur, and not put forward upon the record some fact, upon which an issue might be joined, and a jury impaneled, and it was intimated, beyond insinuation, that there was a hardship upon the defendant by this mode of proceeding. But it is new to me, that a defendant should wish for a jury, where there is nothing but a point of law to be decided. It is quite new to hear it said, that it is a hardship to admit the facts, which have been stated by the defendant himself, and to refer it to the Court, whether, upon his own

\* How. St. Tr.

statement, he is entitled to judgment. It is asserted, on the other side, that we should have averred, that the grand jurors objected to, were *freemen of the city*; that we should have brought in the charter of the city of Dublin and averred it in pleading, otherwise the Court cannot take notice of it. This case has been contested with the city of London, with respect to which the courts are bound to notice the customs, which are certified by the recorder; and the argument is, that there being no such custom in Dublin, your lordships cannot take notice, that you are sitting in the city of Dublin. But there are numerous statutes, which recognize the city of Dublin as a corporation. If the gentlemen on the other side had examined, they would find, that this court is sitting at this moment, as a court of gaol delivery, within the city of Dublin: for the distinction is, that where a record is removed into this court from a county different from that in which the court sits, the court is then considered as sitting by virtue of its high judicial authority, superintending all other inferior courts; whose records are removed by *writters* into this court; but as to the county in which the court sits in the city of Dublin, it is a court of general gaol delivery, superseding all others, except so far as any recent local statutes have authorised others to sit. With respect to all other counties, there must be fifteen days between the test and return of the jury process. But in the county in which the court sits, it awards the return of a jury *instantly*, as all courts of gaol delivery do; your lordships have judicial notice, that the grand jury of the city of Dublin was sworn before yourselves: the caption of the indictment, to which these pleas are filed, shews, that it was found by a grand jury of the city, and the defendant, in the present instance, has pleaded to it, as an indictment *found in the city*; and yet, it is now contended, that you are not to know that you are now sitting in the city of Dublin, and that we should produce the charters of the city. My lords, we rely upon the general law of the land, which requires certain qualifications for jurors, and among others, requires freeholds of a certain value, upon particular occasions; but at the same time, making exceptions in cases where there might be a delay, or failure of justice, if the qualifications, previously required, were essential:—as in the case of cities and towns corporate, where freeholders could not be had; not that it is a privilege of the inhabitants of a city, which Dublin is, to sit upon a trial; for no man claims the privilege of being upon a jury. But we allege, that the exception is wisely placed by the law upon its own ordinances, to prevent its extending to those cases, to which if it did extend, it would be productive of mischief.

It is said, that we ought to shew the persons named in the plea to be *freemen*: that observation might have weight, if it were necessary for us to plead the qualification, which we do

not. The other side allege matter of disqualification, to which we do not think it necessary to reply, by stating new matter, or denying what is pleaded: our demurrer admits what is stated, and if there were any other matter necessary to support the objection of the other side, it should be pleaded. Every man is to be presumed a *probus & legalis homo* until the contrary appears; until his disqualification is pointed out; if it were necessary to show, that the grand jurors objected to were *not freemen*, then the counsel for the defendant have urged only half an objection, for by their plea, they would rely, that they were *neither freemen nor freeholders*, and if their averment be incomplete, the demurrer ought to be allowed: that demurrer relies upon the imperfection of the plea; and it is not necessary for us to render their pleading more perfect. Suppose it to be necessary that the grand juror should be either *freeholder*, or *freeman*; they should have averred that he was not either one or the other. With regard to the latter, the plea is silent, and no authority has been referred to: therefore it is not necessary to enlarge upon that topic. With regard to the qualification of *freehold*, it is very much at large. As to the acts of parliament which have been cited this day, the only inference from them is, that at the time they passed, they were necessary; that there were mischiefs existing, which ought to be remedied, and which were remedied accordingly by the statutes in question.

I conceive, that will follow, distinctly, from the acts cited by the attorney-general; every one knows that by the 10 Hen. 7, commonly called Poyning's Act, English statutes, then in force, were, by a sweeping clause, made law in Ireland, but the statutes passed in England; subsequent to that period, are not of force here. We were told, and it is not denied, that the stat. 2 Hen. 5, requires, in capital cases, and in personal actions above forty marks, that the jurors should have freeholds of a certain annual census. That statute was enacted prior to Poyning's law, and therefore became the law of Ireland. So far as it relates to certain descriptions of cases, it is repealed in England, but is not repealed here. By the 23 Hen. 8, the former statute is repealed in England, so far as it respected capital cases; but that latter act of Hen. 8, being subsequent to Poyning's act, does not extend to this country, in which no similar act has been passed; and therefore, my lords, it must be admitted, that the statute of Hen. 5 (which gave rise to the necessity of enacting the other statutes mentioned to the Court) remains in force in Ireland. These latter statutes are cited to show what the common law was; but if it can be shown that these statutes were necessary, independent of the common law, they fail to afford the inference desired.

This case has been argued upon principle and upon authority. The latter consisted chiefly of inferences drawn from the terms, and passing of acts of parliament, and the former

was founded upon the whole analogy of the law. There was also an authority mainly relied upon by the other side; it was an argument derived from the terms of the writ of summons of the sessions of the peace, cited from Crompton's Justice. With regard to that, it is sufficient to observe, that it does not carry the inference of the necessity of freehold farther than we admit it: it extends only to counties at large; for it appears, from the very passage which was quoted, that a certain number of hundredors were required to be returned; but there are no hundredors in counties of cities or towns: and in the case of the *King v. Higgins*, this was held to be a sufficient argument for restraining the operation of an act of parliament concerning jurors to counties at large, for which it made a certain number of hundredors necessary upon the panel. It could not be intended to apply to those divisions of the country, in which hundredors do not exist, and indeed the inference is so plain, that it is not necessary to cite an authority in support of it.

But the authority of lord Hale has been resorted to on the other side. His words are *general*. Speaking of grand jurors, he says, "freeholders they ought to be;" and it is observable that all the passages which have been referred to, are in *general terms*. We do not mean to dispute the general proposition: we admit the truth of it; but we say, that there exists an exception, which reason and sense suggest, and which is not denied in any book.

Text writers, like Hale, when commenting upon the common law, or acts of parliament, lay down their propositions and rules in *general terms*, without directing their attention to the exceptions applicable to them; and when it is necessary to ascertain, whether there be an exception or not, one precise authority in support of it, will have more weight with the understanding, than a hundred general expressions, which take no notice of a particular exception, and therefore do not exclude it. If it were necessary to show that there may be an exception consistent with lord Hale's general proposition, it is to be shown from lord Hale himself; because he refers to that very writ of summons which has been relied upon by the other side, and when he argues upon that, and it appears to relate to counties at large only, it furnishes some aid to the mind, and demonstrates, that his attention was directed to the case of jurors returned for counties at large, and that he did not then advert to the excepted case of cities and towns.

In arguing this question, it is impossible to overlook the circumstance, that in some borough towns there might be but one freeholder, and in many of those towns they must be confined to a very small number indeed. In every criminal court within them, it is necessary to have a considerable number of jurors; and it is plain, that it would destroy the administration of justice, if it were necessary, that such jurors should be freeholders. To this argument it has been replied, that the stat. 2 Hen. 5, is

a legislative recognition of the contrary: for that it enacts, without any exception in favour of cities or borough towns, that no juror should be impanelled, who had not a freehold of a certain amount, and therefore the legislature supposed, that there did exist a sufficient number of freeholders, competent to supply the jury. I think, it is more natural to presume, that, in the framing of that act, the exception was forgotten; that the attention of the legislature was turned to particular mischiefs, and, in guarding against those mischiefs, they used general words, which were thought sufficient to prevent a recurrence of the evils. But experience soon proved, that, whether the omission of the exception arose from inadvertence or design, it was an unwise omission, and became productive of such serious consequences, that in the succeeding reign of Hen. 8, it was found necessary to alter the act, with regard to criminal cases. As to civil cases, it was less necessary, because, with respect to them, the stat. of Hen. 5, extended only to trials of freehold, or of property above the value of forty marks, in which cases a great proportion of the borough courts had no jurisdiction. But (they all had criminal jurisdictions, and when courts of Oyer and Terminer and gaol delivery, are held in small towns, it is manifest that if freehold were an essential qualification of jurors, the administration of criminal justice must be materially delayed and impeded. The omission of the exception out of the stat. Hen. 5, might have arisen from inadvertence, but the provision in Hen. 8, could not; because it refers to the very case and provides for it expressly.

My lords, there was something like an argument touched upon, as if the necessity of jurors being freeholders arose from the rule, that a man should be tried by his *peers*. That principle cannot extend to any case but treason or felony; for, to this hour, if a nobleman were to be tried for a misdemeanor, he would be tried by a jury of commoners. The community is divided into two classes; noblemen, who are to be tried by nobles, in cases of treason or felony, and commoners, who are to be tried by commoners. But there is no subdivision; and it never has been held that one inhabitant is not the peer of another, because he had not a freehold, and that such inhabitant could not legally sit upon the trial of the other. The case of sir Christopher Blunt\* has been cited by the other side. That was an information upon an *extrusion*: two challenges were taken to jurors: the first was for *insufficiency* of freehold, and it was disallowed; the second was for *want* of freehold, and it was held good. The reporter has not informed us where the question arose; whether in a county at large, or a city, or town corporate. We should therefore be left to mere conjecture, and to infer that it was more probable that the lands of the crown, which were

intruded upon, lay in a county at large, remote from a town. But Higgins's case in sir Thomas Raymond determines this question, for Blunt's is referred to in this manner; "and though it is said, in Blunt's case, that there ought to be some freeholders;" (which I take to be a mistake in the print; it should be *some freehold*)—"that cannot be intended in corporations, for "in some corporations there are no freeholders "at all, and so justice would fail." Therefore, when they made that observation, the Court must have known that Blunt's case could not have been a corporation case, and it is as much as if they had said, "Blunt's case was in a "county at large, not in a corporation, and "therefore does not apply to the present case, "that of Worcester, which is a corporation "case."

There is a case in the books, which is particularly applicable to the observation, that this Court will not take notice of the charter of Dublin; but it also applies to other parts of this subject. It was doubted whether the act of parliament which mentions towns corporate, extended to towns which were counties in themselves; and a case is cited, so early as the Year Books. It was the case of an attaint, which was a proceeding not in the nature of an indictment, but was an action by an individual, alleging that a false verdict was given against him. A writ issued out of the *Officina Breuium*, returnable into the Court, where the original record was, and he there proceeded against the jury as defendants, who were to be tried by a jury of twenty-four; and, there being two juries; one was called the *grand jury*, and the other was called the *petit jury*. Com. Dig. Tit. Attaint. The Year Book is 12 Ed. 4. 13. a. It was an attaint in the city of York. One of the grand jury was challenged, for that he could not expend twenty pounds per annum, according to the stat. 15. Hen. 6. c. 5; it was answered, that the statute has the exception of cities and towns corporate, as all the jury statutes have, except the 2 Hen. 5; it was there contended that that exception means cities which are not counties in themselves, but, by advice of all the justices, the challenge was not allowed, for the statute is general, and did not extend to cities and boroughs. The effect of the objection was, that the statute meant cities which are not counties in themselves, such as Cashel and Armagh, in this country; but the decision has established, that the exception extends to cities which are counties, as fully as it does to the smallest towns corporate, and when we come to consider the reasonableness of the rule which is contended for; when we consider, that cities and boroughs were constituted at a time when there were few, or no freeholders, it is impossible to conceive that it should be otherwise. There must be twenty-three freeholders on the grand jury, and twelve upon the petit jury. Upon the latter panel there should be a sufficient number returned to leave room for thirty-five peremptory challenges by the prisoner at common law,

and an indefinite number of challenges by the crown. So that there must be seventy freeholders, at least, and, consequently, there would be a total failure of justice in every city or town corporate in which a criminal court sat.

Now, let us see, for a moment, the mode of proceeding in summoning members to parliament. The form of the writ directed the sheriff what he was to do. It required the sheriffs of counties to return two knights, girt with swords, which meant, persons who were seized, *in capite*, of a certain portion of land—a knight's fee is well known, and thirteen knights' fees made a baron's fee; so that the distinction depended upon territorial possession, and none should be returned, but knights girt with swords, as persons of consideration. From the cities or boroughs, *landholders* were not required, but two *citizens* from the cities, and two *burgesses* from the boroughs. Is it to be conceived, that where the territorial possession of freehold was not required, in order to form a part of the legislative body of the country—not because territorial property was undervalued, but because it could not be had,—yet that the common law, which is not founded upon positive institutions, but has grown out of, and been moulded upon reason and necessity, should require, that trials for misdemeanors, or even of cases of life and death, in places where the inhabitants are made wealthy by trade, should be had before none but freeholders. A freeholder is the natural and proper juror of a county at large—he is an inhabitant of that division of the country, in which alone considerable landed property is to be found. But can such a qualification be required in that district, in which it does not exist?

My lords, I wish, as much as possible, to avoid repetition—and not to travel again over the ancient acts of parliament, or the ground which has been gone over by the attorney-general, in such a manner, as to leave nothing unsaid. But, my lords, there have been some observations made upon that most important case of the *King v. Higgins*, which it is necessary to meet, not only from their own nature, but from the respect, which every man who heard them, must entertain for the gentleman from whom they came, and the weight they derive from the talents with which they were enforced. It was observed, that a case between the crown and the subject can derive little authority from the name of chief justice Saunders—that he was a man, whose subserviency was so well understood by the crown, that Pemberton, who was chief justice of the King's Bench, and who upon the trial of lord Russell, declined certain compliances, which were expected, was removed to the Common Pleas, in order to make way for Saunders, preparatory to the trial of Algernon Sidney. I thought, at the time, that there was an error in the statement, but I was so impressed with the eloquence of the learned gentleman, that I would not venture to suggest my doubt—but



determined to satisfy myself by inquiry. I have accordingly examined the different contemporaneous reporters. Your lordships know, that some elder reporters indulge in a minute detail of the promotions and removals of the judges. I found a memorandum in sir Thos. Raym. 478, Hilary Term, 34 and 35 Car. 2nd. The date of the reign of Charles 2nd was calculated from the decapitation of his father, which was the 30th of January, 1648, near the middle of Hilary Term, and therefore it is styled, Hil. Term, 34 and 35, Car. 2nd. "Memorandum, the first day of this term, Edward Saunders, esq. of the Middle Temple, appeared at the Chancery bar, to a writ testated in the vacation, to command him to take the state and degree of a sergeant at law, and was then sworn, and immediately went from thence into the Common Pleas treasury, and there, in the presence of all the judges, except Levinz, who was sick, made his count, and had his coif put on, and went to the Common Pleas bar, and made some motions, till the lord keeper came into the court of King's Bench, and then he was sent for to the bar, and when he was there placed, the lord keeper made a very excellent speech to him, and then he came into the court, his writ for chief justice was read, and having taken the oaths of obedience and supremacy, and oath of chief justice, he was placed chief justice of the said court, in the room of sir Francis Pemberton, who was the day before sworn chief justice of the Common Pleas, at his own desire, for that it is a place (though not so honourable) yet of more ease and plenty, as the lord keeper said in his speech to Saunders."

It may be said, that Pemberton could not avoid retiring from the King's Bench to the Common Pleas; but the dates will show, that the insinuation cannot be maintained, and that Saunders had no connexion with the trial, either of lord Russell, or colonel Sidney. Lord Russell was tried by special commission at the Old Bailey, on the 18th July, 35 Car. 2nd, several months after Saunders had been appointed chief justice of the King's Bench, and after Pemberton had been appointed chief justice of the Common Pleas, and therefore his removal to the latter court could not have been on account of his conduct upon lord Russell's trial. Saunders did not report any case later than the 24 Car. 2nd. He was appointed chief justice, in Hil. 34 and 35, Car. 2nd, and the trial of Sidney took place in the November following. Saunders was either dead, or removed before that time, for it appears that Jefferies was the chief justice who presided. The trial was at the bar of the King's Bench, on the 21st of November, 35 Car. 2nd, and therefore, whatever happened upon that trial, which has been the subject of censure, belongs exclusively to that man, whose decisions will not be cited as authority in a court of justice, in a case between the Crown and the subject:—I mean Jefferies; and cannot be imputed to the other,

who was highly respectable for his learning and talents, as a lawyer, and whose name stands high in judicial authority. His reports are esteemed as the best and most accurate of his day. He was of delicate health at the time of his promotion, and it is probable, that he died in a short time after.\* If he were removed, the inference sought to be drawn, turns the other way, and that he was removed, because he would not comply with the desires of the Court. So that the case of the King v. Higgins, stands above all impeachment; it conveys the opinion of two courts upon the very point, and it is of as much authority as any case that was not carried to parliament can possibly be. The same case is reported in Skin. 105, 106, where a motion was made in arrest of judgment, and the Court refused to permit the counsel to argue, whether want of freehold be a challenge to the polls, having by the opinion of the Court, and likewise of the justices of the Common Pleas over-ruled it upon the trial.† From there being a motion in arrest of judgment, the objection must have appeared upon the record, and the case might have gone to parliament by writ of error, if the parties had been so advised.

Mr. Justice Day.—Could the party have a writ of error in a criminal case?

Mr. Townsend.—Yes, my lord, by consent of the Crown. In a capital case, the consent is discretionary, and has been refused for political reasons; but in  *misdemeanors*, the subject can have it, *ex debito justitiæ*, upon a petition which the king cannot refuse.

My lords, the other exception taken is in the nature of a principal challenge, or a challenge to the favour; and for the purpose of my argument, it is not material which it is; because we contend, that in either view, it cannot be allowed. If it be a principal challenge, it is against reason and precedent:—and if it be a challenge to the favour, it cannot prevail in the case of the king—that there cannot be a challenge in the king's case, besides the passage, in which it has been laid down by lord Holt (as great and constitutional a judge, as ever presided in any court, in Parkyn's case, 4 St. Tr. 633) I beg to refer your lordships to a case in 21 Vin. Abr. 272, tit. Trial, Totten-sol's case, in which it was ruled, that there can be no challenge for favour, where the king is a party. Lord Coke gives in his usual way, a quaint reason for this:—that it is the duty of every man to favour the crown. But this is not true, in the sense in which it is used; it is the duty of every man to honour the king—but

\* 19th June, 35 Car. 2, Ch. J. Saunders died. 3 Shower, 308. See also the note in Howell's St. Tr. vol. 9, p. 588; where several inaccuracies of Mr. Sergeant Rannington, and sir John Dalrymple, respecting these changes, are corrected.—Note by Mr. Rivington.

† And see 2 Show. 287.

not to favour the king against justice. But the true reason is given in a note of Mr. Hargrave, which I observed trembling under the finger of my friend, Mr. Goold, and which he did not read.\* "That from the extensive variety of the king's connexions with his subjects, through tenures and offices, if favour to him was to prevail, as an exception to a juror, it might lead to an infinitude of objection, and so operate as a serious obstruction to justice in suits in which he is a party." If, therefore, objections, which are admitted in ordinary cases, were admitted in the case of the king, it would make the administration of justice absolutely impossible. My lords, see the effect it would have in challenges to the array: there could not be a trial in any county at large in which the sheriff returned the jury. The sheriffs of every county in Ireland, and I believe in every county in England, except two, are appointed by the crown—they are removable at pleasure, and are by their offices entitled to fees and emoluments. In some places, they are offices of considerable profit, in some they may not—but in point of law, they are all entitled to fees: there may, therefore, be a challenge to the array in every crown case, unless where the writ goes to the coroner which was never heard of, for the return of a grand jury.

It has been compared to the case, in the books, of the king's valet, or menial servant. I can scarcely believe, that the learned gentleman who made the comparison was serious. Can it be thought, that any comparison will hold between the king's menial servant, and those who are acting in the service and for the benefit of the state? All the justices, sheriffs, magistrates of every description, hold their offices during the pleasure of the crown; but they must be considered to be above the temptation, or the petty influence, that could arise from such their situation. We are told, that the mind is biassed and influenced. No doubt, the mind is subject to many impressions; and we must lament, that however a tribunal be constituted, the accused must be tried by men of frailty. But give me leave to ask, would the chance of a fair trial be increased by excluding those from the jury, who are selected for their talents, their integrity and character, to assist in the conduct of the public business? If it would, it would be a serious injury indeed; and in many places, it would be the duty of the crown, in appointing to offices, previously to inquire, whether the appointment might not be an injury to the administration of justice in those places.

This is not the first time in which an objection of this kind has been taken; but it is the first time, in which it has been persevered in. A gentleman of fortune, now living in Ireland, Mr. Rowan,† was tried in the year 1794, at the bar of this court, upon an information for a libel; a challenge was taken to a gentleman

called upon the jury, as holding a place under the crown. The attorney-general of that day, Mr. Wolfe, afterwards presided in this court, and was created lord Kilwarden; a man, whom I will not hesitate to compare with any other, for honour, integrity, and constitutional spirit; whose last words set the seal to his character, and will make him be remembered by posterity as a genuine supporter of the laws of his country. He started up with indignation and astonishment, at the notion of such a challenge; he insisted upon the illegality of the objection, and observed, that it went against all that was honourable and respectable in the land, and it was over-ruled by the Court. I believe your lordship was at that time on the bench. Perhaps, the warmth of the moment induced lord Kilwarden to express himself too largely; the objection did not militate against all that was honourable, but it did against a large proportion of honourable and worthy men; and, whatever may be thought by some, let any man look round through the country, or that portion of the community with which he is acquainted, and say, whether he does not see among those who are now engaged in the public service, many individuals of great respectability and honour, and as fit to discharge the duties of grand jurors, and to assist in the administration of justice, as any others who could be named.

My lords, the attorney-general of that day would not have opposed the challenge, if it were admissible, nor would the Court have over-ruled it. I believe I have stated it correctly from the printed report.\*

Lord Chief Justice *Downes*.—I have a perfect recollection of the facts of that case, as you have stated them.

Mr. *Townsend*.—My lords, having disposed of the law of the case, at least to the best of my power, it is fit, that I should take notice of one or two observations, which fell from the other side, during the argument. It was stated, that this was a case interesting in the highest degree to five-sixths, or even more of his majesty's subjects;—that the feelings of the people are engaged, and the result is looked for with anxiety, from the remotest corners of the island. It may be interesting to some, and the anxious wish of others, that the indictments which have been found, should not be tried. But farther than that, what interest have his majesty's subjects?—No other than this, to have that done, which the Court will do, whether it be of public interest, or not; that the law shall be settled, and that this case shall be decided according to it.

But as to the public interest, the public has been looking on for five hundred years, at grand juries returned in the same manner, as the present, without a single man objecting to the mode, or expressing a wish, that there should be any alteration. There is no man

\* Co. Lit. 156, a. note 4.

† 1 How. Mod. St. Tr. p. 1033.

\* 1 How. Mod. St. Tr. p. 1033.

who desires to see such an ancient system, and established usage, departed from, though some endeavour to torture the present into an irregularity; no man desires, that the most respectable citizens should be excluded from the grand jury; those citizens, who have raised themselves by their talents and industry, and have qualified themselves by experience, to discharge the duties of jurors; is there any man who wishes to see such men displaced, and to have them succeeded by illiterate persons occupying small farms round the city?—Will any man wish to have such a practice adopted in this city?—Is it not more fit and consistent with the nature and constitution of the city we inhabit, that the grand jury should be composed of its wealthy and intelligent aldermen and merchants? Would any man desire that those should be overlooked, and that the sheriffs should search through the suburbs for freeholders, having forty shillings by the year?—If there be any such man, I cannot agree with him, and no good man will agree with him. Shall it be said, that the man who is competent to transact the complicated business of mercantile concerns, and whose habits have qualified him for the discharge of public duties, shall be excluded? The possession of a freehold is one thing, the possession of wealth, character, and credit, is another. Out of which class would any man wish to have the grand jury chosen?—if from the former, I envy him not his choice.

**Mr. North.**—My lords, I do not rise to make any farther observations upon the question before the Court, but merely to justify, from authority, the impression which yesterday I conveyed to the Court respecting chief justice Saunders.

**Lord Chief Justice Domes.**—I should be sorry, if we sat here to try the reputation of chief justice Saunders.

**Mr. Borne.**—My lords, Mr. North's authority was taken from North's life of lord Guildford.

**Mr. Townsend.**—My lords, I am perfectly satisfied, that the distinguished gentleman, who made the observations upon chief justice Saunders, did not utter them, without thinking himself justified by authority. So far as North's life of Guildford was authority, he was supported in the observations. But I have founded my reply upon the best sources; the printed reports of the times; the dates of the trials, compared with the changes upon the bench. I was anxious to show, that justice had not been done to the memory of Saunders.

Adjourned.

Saturday, 16th November, 1811.

#### JUDGMENT.

**Lord Chief Justice Domes.**—In this case, there have been two pleas in abatement to an indictment for a misdemeanour, to which pleas

the attorney-general has demurred. The first plea is, that some of the grand jurors therein named, are not freeholders of the county of the city of Dublin; and the second plea is, that some of the grand jurors hold offices under the crown, whence they are removable at the will and pleasure of the crown. On the part of the prosecutor it is contended, that neither the one plea nor the other, forms a valid objection to the indictment, or warrants the Court to say, that the defendant ought not to be tried upon it.

It is contended, with respect to the first plea (which objects the want of freehold), that other qualifications, in a city or town corporate, where this objection is made, are sufficient—for instance, that of being a freeman. For the traverser, it is contended, that supposing freehold not a necessary qualification, but that it is sufficient that the juror should be a freeman or citizen, such fact does not appear in this case; that the attorney-general ought to have replied, and to have shown such a qualification by the city charters, from which it should appear, that the juror was sufficiently qualified, although he had not a freehold, and that we cannot otherwise see that the indictment was found in a city exempt from the general law applicable to counties at large; as to this preliminary objection, it is impossible to submit to it for a moment. The Court must take notice in what place they sit; and the indictment, by the caption, shows, that it is taken in the city of Dublin; the panel of this jury was returned in the presence of the Court, by the sheriffs of the city. But, if we could give way to this preliminary objection, and hold that we cannot take notice of the place where this indictment is found, we must allow the demurrer to this plea, because the plea objects the want of freehold in the county of the city of Dublin, &c., and, therefore, unless a freehold in that city be a necessary qualification for a grand juror every where, we must, if we cannot take notice where the indictment is found, hold the plea bad.

The plea itself supplies an answer to the objection, which is, that the juror has not a freehold in the county of the city of Dublin. Such an objection could not be relied upon for a moment, any where, but in the country in which the indictment was found; it would be ridiculous to object for want of freehold in any other place; and therefore, the plea itself is conclusive of the fact, as to the place in which the indictment was found.

It is then objected, that if there be other qualifications, independent of freehold, by which a juror may be legally impaneled, these ought to appear. That objection, in my mind, is as weak as the other. When a party pleads, in abatement of an indictment, a particular matter of disqualification in the grand jury; he admits the truth and existence of all other qualifications, which he does not deny. He rests upon the single objection, which he assigns, and in doing so, the Court is left to

presume, that there is no other; it might as well be contended, that the Court should expect, that the attorney-general should aver, that the grand juror was not a minor, but of full age; that he was not an alien, but a natural-born subject, and so of every other qualification for serving on a grand jury. Therefore, as to these preliminary objections, which have been urged on the part of the defendant, in my apprehension, they are not of the slightest weight.

The principal question then is, "whether in a city, where an indictment for a misdemeanor has been found, freehold in land be an essential qualification in a grand juror." There is little to be found in the books relative to grand jurors distinctly. But the question has been argued on both sides with analogy to the qualifications of *petit* jurors, and as they are to *try* and the grand juror only to *accuse*, it seems to be treating the subject fairly on the part of the crown, to inquire whether in a *petit* jury circumstanced as the present jurors are, they would be qualified to serve. It is admitted, that in counties at large, the jurors must be freeholders, and that every where they must be *liberi et legales homines*. This latter quality, it is contended for, on the part of the crown, is communicated by the king's charter, to members of corporations, who are thereby made equally competent to be impaneled on juries, as inhabitants of counties at large are, by reason of their freeholds; and it is contended, that necessity gives rise to such qualifications to prevent a failure of justice in districts so small as some corporate towns are, and the necessity of such qualifications and its sufficiency without possessing any freehold, is argued for, by inferences drawn from statutes, from reference to law writers, and decided authority.

On the other side, general principles are insisted on, one uniform qualification of jurors (namely freehold) is maintained, the inferences drawn from the statutes are denied, and the authority of one decided case, which has been much relied upon by the counsel for the crown, is questioned.

It is to be lamented, that there is a want of perfect precision in the text writers upon this subject; we should expect something from Coke, Hale, and Hawkins, to set the question at rest, and show, with precision, whether the admitted necessity, in general, of the qualification of being a freeholder, was at common law universal, applicable to both grand and *petit* juries, and as well to cities and corporate towns, as it is acknowledged to be in counties at large.

But this precision, so desirable, will not be found in any of those writers. In 2 Hale, 155, it is said, "that the grand jurors must be *probi & legales homines*, and therefore, if any one of the indictors be outlawed, though in a personal action, it is a sufficient plea to avoid the indictment." Then he says, "touching their annual census, I do not find any thing

"determined, but freeholders they ought to be." 2 Hale, 55. Lord Hale speaks generally, in this passage. He is treating of counties at large, not adverting to cities or boroughs. His words are general, but cannot be said to be absolutely exclusive of all exceptions of cities or boroughs, concerning which he was not speaking; and if there be other evidence of the law, sufficient to satisfy the mind, that there is an exception to the rule, Hale's testimony does not contradict it. In 2 Hawk. c. 25, s. 19, p. 308, he says, "I do not find it any where holden, that none but freeholders ought to be returned on a grand jury. But how far the law is in this respect altered by statute, shall be shown in the twenty-first section." He then states two statutes, which have been relied on in argument here; the 13. Edw. 1. Westm. 2, c. 38 and 21, Edw. 1. *De iis, qui ponendi sunt in assisis*. The first of these enacts, "that none shall be put on juries or assizes, though they ought to be taken in their proper county, who have less tenements, than to the value of twenty shillings yearly." The second statute is upon the same subject, and to remedy the same grievance; the oppression of the poor by sheriffs in favour of the rich.—This statute prohibits the sheriff to put in any recognizance that shall pass out of the county, those who have not lands and tenements of the yearly value of 100 shillings at least, and within the county, none shall be impaneled who have less than 40 shillings. But when recognizances, assizes, and inquests pass upon any matter touching cities, boroughs and towns, it shall be done like as it hath been accustomed. From that exception, Hawkins infers, that neither by common law, nor by these statutes was there any necessity, that *petit* jurors should be freeholders in cities, and from thence he infers, that it is probable, that there was no greater necessity, that grand jurors should be freeholders.

But it is said, that the inference which has been drawn from the early statutes of Edward, by the counsel for the crown, and by Hawkins, is not a fair one—that these statutes only required a qualification from county jurors in point of value of freehold, and have not thought fit to require the same as to cities or towns corporate; and it is insisted on, that in both, jurors must be freeholders, and that the only consequence of those statutes was, that in counties, the freehold must be to a certain amount; but that in cities, there must be a freehold, although no value is necessary. The inference drawn by Hawkins, if it rested merely upon the circumstance of value of qualification, would not carry perfect satisfaction with it. Those statutes certainly insist on certain values of freehold in counties, not with a view to the parties, but to relieve the poorer classes of jurors from grievances which they suffered. Possibly the same mischief did not exist in the corporate towns, so as to call for a similar remedy, for none is given of any kind, and *non constat*, that Parliament, if they deemed it

necessary, would not have made the same regulations, as to jurors of cities, or some other remedy analogous to their situations. But the inference drawn by Hawkins does not rest on the exception of jurors in cities from the same value of qualifications, as those in counties, but from the saving of the rights of corporations "it shall be done as hath been accustomed" — shewing, that those towns possessed usages, with regard to juries, with which the legislature did not intend to interfere.

The next statute argued on is the 2. Hen. 5, c. 3, and this is the first statute which enables the party prosecuted, or the party in an action, to object to the want of freehold, or insufficiency of freehold in a juror. It enacts, that no person shall be permitted to pass in any inquest upon trial of the death of a man, nor "in any inquest between party and party, &c. "if the same person have not lands or tenements of the yearly value of forty shillings "above all charges of the same," &c.—so that it be challenged by the party, &c. Now, that statute has no exception of cities or towns; the mischiefs which it intended to remedy, were recited to be general, "mischiefs and disherison through all the realm of England;" and therefore, although cities and towns were not expressly mentioned, it was held to extend to them. But, clearly, it does not extend to the offence of misdemeanor, which remained, after that statute, triable as at common law. The provision of this statute was found inconvenient, for want of a sufficient number of freeholders qualified under this statute, and the 23rd of Hen. 8th, ch. 13, was enacted; it recites, that trials for murders and felonies, in cities, boroughs, and towns corporate, had been oftentimes delayed by reason of challenge for lack of sufficiency of freehold; and it enacts, that every person, who either by the name of *citizen*, or of a *freeman*, or any other name, doth enjoy and use the liberties and privileges of any city, borough, or town corporate, being worth in moveable goods to the value of forty pounds, be admitted in trials of murders and felonies, *albeit they have no freehold*, &c. It is observable upon this statute, that misdemeanor is not mentioned in it, or in the statute of Henry V. And yet, if misdemeanors were triable at common law, by freeholders only, the same inconvenience must have arisen from the paucity of freeholders, as in cases of murder and felony; and it is not very easy, on a supposition, that freeholders were necessary at common law, to give a reason that could induce the legislature to suffer persons who were not freeholders, to sit upon trials for murder, and other felonies, and leave it still necessary, that none but freeholders could be impaneled in cases of misdemeanor. — This statute furnishes a very strong inference, that, at least in the case of misdemeanors, there was no necessity, by the common law, that jurors should be freeholders; because, if there had been such a necessity, the legislature would have extended the remedy to

them, and made them triable by freemen having a qualification in goods, as was done in the cases of murder and felonies; and that inference arising from the statute, furnishes a strong support, if any were wanting, to the case of the King, *versus* Higgins, in sir T. Raymond.

It plainly appears, from an examination of all the statutes, relative to juries, that every general act, on the qualification of jurors (except that of Hen. 5, afterwards repealed in this respect) has an express saving for cities and towns corporate, in various phrases; in one, the expression is, *it shall be done as was accustomed*; in another, *they shall return such persons as they have been accustomed to do*; and in another act, *saving their ancient usage of returning juries*. All which show, that there was an ancient usage in cities and towns corporate, different from the course of returning juries in counties at large, and it was not thought expedient by the parliament to put them upon the same footing. No inference arises from any of those acts, that any offence, below felony, which the present is, was ever by law, or custom, required to be tried by freeholders in counties of cities, as in counties at large.

Where the parliament has, in different ages, placed a value upon the freehold, which should qualify persons in counties at large, and has from time to time increased that value from twenty shillings to ten pounds; in all these instances, it saves the usages of those towns, and no qualification in land is, in any instance, required; except by the statute of Hen. 5, which in this respect has been repealed. The next instance in which any reference is made in any act to their qualifications, is in the statute of the 23rd Hen. 8, which enables them to try murders and felonies, with a qualification of *personal property* only. All this demonstrating, that however the case may have been as to murders and other felonies, before that statute, and under the act of Hen. 8th, no reference was ever had to their being possessors of freehold property, at any period, as a qualification for the trial of minor offences.

With these observations on the provisions made by the different statutes, and especially observing, that if freehold property ever was the qualification for a juror in towns corporate, that the statute of Hen. 8th left misdemeanors triable as at common law, and of course, in so singular a way, that misdemeanors must be tried by *freeholders*, while *personal property* was made a qualification for the trial of murders, which can scarcely have been possible to have been done by the legislature. — With these observations, I say, I shall now read the case of the King and Higgins, from sir T. Raymond's reports.

[Here the chief justice read that case, and then proceeded.]

I have compared the acts referred to in that case, and examined all the statutes upon the subject of juries, from the first in our books,

down to the time of that decision, and I think it impossible to draw an inference from any of them, contrary to the opinion of the Court in that case. I think, the Court, in that case, was clearly supported in the opinion it gave, that misdemeanors were then triable by juries, at common law, in corporations, and, that there is no evidence on the books, of their ever being tried by *freeholders* in cities and towns corporate; and I can readily believe, what is there asserted; that by constant practice, in all the trials at Guildhall, London, by *Nisi Prius*, no such challenge was ever made or allowed; and thus, it would have been mischievous, after so long practice to the contrary, to admit that challenge. This case, then, confined to its proper subject, *misdemeanors*, seems so far to be, in itself, liable to no objection;—and it is met by no contrary authority; and it is not proved erroneous by any reasoning. An ill use was, indeed, made of this case, on the trial of lord Russell. He was tried for high treason, and took this challenge, and the counsel for the crown urged the case of the King and Higgins, as an authority for over-ruling the challenge. But whatever was wrong in the proceedings against lord Russell, cannot fairly be attributed to the influence of this case, or of Saunders, who was chief justice when it was decided. He did not sit upon lord Russell's trial.

The case of the king against Higgins, does not touch at all upon trials for treason, or discuss whether or not the jurors in such cases must be freeholders: but the generality of the expressions when he observes on Blunt's case, gave to the counsel for the crown, on the trial of Russell, the opportunity of making an unfair use of it; for, in Higgins's case, the Court said, that though it is said in Blunt's case, that there ought to be some freehold, that can not be in corporations, &c. Now, Blunt's case was a misdemeanor, and did not arise within a corporate town, but was in a county at large, (as may be plainly inferred from the words of the Court, in discussing Higgins's case), and therefore Saunders does not deny its authority.

The present case is one arising within a city—so was the case of Higgins, and therefore, when chief justice Saunders says, that though in Blunt's case it was held, that the jurors ought to have some freeholds, that cannot be intended of corporations, for in some corporations there are no freeholders at all, and so justice would fail; he does not controvert the doctrine in Blunt's case, which was in a county at large, but explains the meaning of the case and shews, that it does not apply to the case then before the court; because the objection, that there should be freeholds, applies to counties at large, but could not be intended to apply to corporations: and therefore it appears, that the observations in Higgins's case were meant to apply to the case of corporations only, and not at all to counteract the doctrine of Blunt's case, that the jurors to try misdemeanors in counties at large, must be freeholders: and if the decision of Saunders had

been treated fairly and properly on lord Russell's trial, it would have received the same answer, which he gave in Blunt's case; and it would have been said, "the decision of Saunders does not apply," for when he said, freeholders were not necessary on trials in corporations, he was speaking not of cases of treason, but of *misdemeanor*.

If we do not do him the justice of confining his general expression to the subject matter, on which he was speaking, then indeed we make him say what is contradicted afterwards, by the act reversing Russell's attainder, and by the bill of rights: these acts declare the common law; that in all cases of high treason, the jurors must be freeholders. Saunders does not appear ever to have denied that doctrine; certainly not in Higgins's case.

Perhaps, indeed, the Declaration of Right had in one respect, thrown some doubt on part of the reasoning of that case, where it is used as an argument, that in some boroughs there are no freeholders; yet by the Bill of Rights, it is declared, that all treason must be tried by freeholders, we must therefore suppose that freeholders exist in all, or if the case shall ever arise of a treason committed in a city or corporate town, forming a county in itself, and without freeholders sufficient to form a jury, an embarrassment to justice will arise, which I hope will never happen.

But if doubts, on that account, affect part of the reasoning on the case, it does not strike me, that they can warrant us in condemning a decision, uncontradicted by any other; made by the concurrent opinions of two courts in Westminster Hall, conformable to long and ancient practice, and to the best evidence of the common law, fair inference from ancient statutes, uncontradicted, as it appears to me, by any decided case, or any *dictum* of any law writer, plainly bearing on the subject; and it is remarkable, that about the period, when the declaration of rights was made, and about the time of the decision in Higgins's case, there had been numerous trials for misdemeanors, of almost as great importance, as even a case of treason; yet the case of misdemeanor is not touched upon by the Bill of Rights, which requires the qualification of freehold, in the case of treason only.

I ought to have noticed, that three or four Irish statutes have been referred to, applicable to Cork, Waterford, Galway, &c. which recite an inconvenience arising from want of sufficient freeholders to be impaneled upon juries:—from which it is inferred, that freeholders are necessary in corporate towns. This observation was satisfactorily answered from the bar; that the statute of Hen. 5th created the mischief, and not the common law:—that statute existed in Ireland, and was not repealed here by the statute of Hen. 8th, so that no inference arises from these local acts explanatory of how the common law stood before.

The case then of the King v. Higgins, which is directly in point to the present, cannot be

shaken, and must rule this case, and the demurrer to the first plea must be allowed.

As to the second plea, that some of the grand jurors hold offices under the crown, removable at the will of the crown, it is enough to say, that it has been solemnly decided to be no cause of challenge to a petit juror; and *a fortiori*, it is no cause of objection to a grand juror. If such an objection were allowed, we must hold that an infinite number of the most meritorious persons, must be presumed incapable, and absolutely disqualified from honestly executing the office of a juror. The true reason, why no such challenge to the favour lies, is given by Mr. Hargrave, because the connection between the crown and the subject is so extensive; that if such an objection were allowed, it would disqualify so many, as to impede the administration of justice. Besides, there are several statutes, both here and in England, exempting various public officers from the duty of serving upon juries; not disqualifying those officers, but exempting them, on account of their being engaged in the public service; which provision would be unnecessary, if by law they could not serve upon juries.

It is not necessary to say more upon this point, which has been so often determined, with respect to petit jurors, particularly by lord Holt in Parkyn's case, by lord chief justice Pratt, in Layer's case, and in one of the trials here, arising out of the proceedings of the United Irishmen:—I believe in the case noticed at the bar, this objection was determined to be no ground of challenge. Therefore, in my apprehension, the demurrer to both these pleas in abatement should be allowed, and the traverser should be put to answer the indictment.

Mr. Justice Day.—The zeal, and apparent confidence with which this case has been urged on the part of the traverser, will, I trust, excuse me, if notwithstanding the conclusive argument which we have just heard from my lord chief justice, I trespass, for some moments, upon the public attention. The traverser has pleaded in abatement:—first, a plea for favour in the grand juror to the crown; and secondly, *want of freehold*: and the attorney-general has demurred. With respect to the first, I have already anticipated that objection, when I gave my opinion, touching the right of challenging a grand juror, before he is sworn; and I said, that a subject cannot take a challenge to a juror for favour to the king. Various grounds have been assigned for this rule of law: but whatever be the principle, certain it is, that the rule stands upon very high authority. Bro. Abr. f. 122, says "The king can challenge for favour, but such a challenge against him is of no avail." And in the same book, f. 126, "No man can challenge against the king, that a juror is servant or favourable to the king." So in Co. Lit. 156. "Where the king is a party, one shall not challenge the array for favour;" and in Par-

kyne's case, 4 Stat. Tri. 682,\* lord Holt, assisted by Trehy and Rokeby, all great names, held expressly, "that it was no cause of challenge, that the juror was servant of the king." So distinct does the law consider the king in his political capacity, as the *Custos Regni*, and interested (not as the exception would import in the destruction, but) in the preservation and protection of his innocent subjects. Here then are three of the greatest authorities in the law, concurring in the point, that such an exception does not lie to a petit juror, even in a case of treason; much less then will it lie to a grand juror, and that in the case only of a misdemeanor.

With regard to the second exception, although pressed with much confidence from the bar, and sustained with great erudition, eloquence, and modest worth, by a young gentleman,† who has given early promise of becoming an ornament to our profession; that appears to me, to be as untenable as the first. The affirmative of that exception, it is upon the gentleman, who make it, to sustain; and in my opinion, they have sustained it as an universal proposition, more by assertion, than by argument, or fair authority. Upon principle, they did not offer to support it; they did not pretend to say, that however expedient and desirable a criterion of independence, freehold tenure might be in counties at large, where freeholds abound, it would be reasonable to exact the same qualifications in cities or towns, where from the paucity of freeholders, it would be always difficult, often impossible, to find a sufficient number. In truth, it was out of the inconvenience and manifest obstruction to the public justice, in establishing a freehold qualification, in cities, that the usage contended for by the crown had grown. And, therefore, the gentlemen very prudently seek to ground themselves upon authority.

But what are the authorities to which the counsel for the defendant have referred us? The first is lord Hale, a name never to be mentioned but with honor and veneration, and of high authority in crown law. But there is sometimes a want of precision in his work, which no doubt would have been supplied, had that great and good man lived to publish it. Speaking of grand jurors, he says, "touching their annuus census, I do not find any thing determined; but freeholders they ought to be."‡ But when we look to the chapter, it is plain, that this position was meant to be confined to grand juries of counties at large. Hale begins with stating the precept to the sheriff, which he gives in three or four terms—"each requiring him to return twenty-four from each hundred." Upon this precept he says that, "the sheriff is to return twenty-four, or more from the whole county, out of which the grand inquest are taken

\* 13 How. St. Tr. 78.

† Mr. North.

‡ 2 Hale, 155.

"and sworn 'ad inquirendum pro domino rege & corpore comitatus.'"—All this is plainly confined to counties at large. He then proceeds, "Now touching the grand jury then returned," (i. e. the county grand jury) "there are some things considerable. They must be probi & legales. Touching their annuus census nothing is determined, but *freeholders they ought to be.*" Who ought to be freeholders? Why the grand jury of whom only he was speaking, namely the grand jury of counties at large. And, therefore, nothing is plainer, than that this high authority, when examined, does not support the position *universally*. It is applied by Hale to counties at large, and predicates nothing of cities and towns corporate.

The next authority was 4 Black. Com. 307; he lays down the rule in the same general terms, "that grand jurors ought to be freeholders." But upon reference to the book, it is manifest, that he also, is treating of grand juries of counties at large only—"The sheriff" (says he) "of every county is bound to return twenty-four good and lawful men of the county, some out of every hundred, to inquire," &c. "They ought to be freeholders"—plainly speaking of county grand jurors; echoing the very terms of lord Hale, and adding nothing to his authority, but removing the doubt, if there were any, that lord Hale had only counties at large in his view.

The next authority was Brant's case,\* where there was a challenge to a juror because he had only a freehold of fifteen shillings per annum, which was over-ruled, the court holding, that at common law, if the juror had *any* freehold, it was sufficient, and that he should have *some* freehold was determined. In this case, it is true, the rule seems to have been laid down universally. But let it be recollected, that it was the case of an information for intrusion into the lands of the crown which *ex vi termini* makes it probable, that the premises lay in a county at large, and not in a town; and therefore, that the case regarded a county grand jury. But that is put out of all doubt by the enlightened argument of Mr. Townsend who referred us to Higgins's case,† where it appears, that Brant's case was a case in a county at large, and not in a corporation.

These are the only authorities which I have collected on the part of the defendant, authorities which leave the case of cities and towns corporate at common law, altogether untouched. Cities and boroughs do not appear to have entered into the contemplation of those authorities. And, perhaps strictly speaking, it would be sufficient here to say, that counsel have failed to establish the proposition in the *universal* form in which it was advanced; namely, that jurors in *all* cases ought to be freeholders, and therefore, that the plea should be over-ruled and the demurrer allowed.

But is a question of such expectation and importance, as every question must be which relates to the liberty of the subject,—it is the duty of the Court to ascertain what really and truly is in the point. And, in my opinion, it may be fairly deduced from a view of all the statutes and authorities—that neither by the common law, nor the statute law, is it necessary, that a juror in a city or borough town should be a freeholder, in the case of a *misdemeanor*.

The earliest statutes, which prescribe a definite quantum of freehold qualification for jurors, are the two statutes of Edw. 1. which enact, that none shall be put on assizes, or juries, though they ought to be taken in their proper county, who have less tenements (i. e. frank-tenements) than 40s. yearly; "provided that in cities and boroughs the same may be done as was accustomed." That proviso indeed was *ex abundanti*, for the statutes are expressly confined to counties; but it marked the extreme caution of the legislature to introduce the freehold qualification into cities. What that usage of corporations was, in respect to their jurors, is not expressed in those statutes; but Hawkins states it to have been "that freehold was not a necessary qualification of jurors in cities and boroughs." The next statute was the 2 Hen. 5. c. 3. which required, that jurors should have lands and tenements of the yearly value of forty shillings, in all civil and capital cases; capital not *expressly*, but it has been so held in construction. In this statute, the same caution was not displayed, as has been in 21 Ed. 1. for here, from the generality of the wording, the statute has been always construed to extend to cities and boroughs as well as to counties. This statute, however, which was the first that prescribed a freehold qualification to cities, did not touch the case of *misdemeanors*.

The next statute is the 23 Hen. 8. which throws great light upon the subject. By this time the freehold qualification enacted by the 2 Hen. 5. it would seem, began to be felt as a great obstruction, both to criminal and civil justice. This statute then was enacted to cure the mischief in criminal cases. Its title is, "An act for trials of murders in cities and towns" And it recites,—"*Forasmuch as trials for murder and felony are in cities and towns corporate, often delayed by challenges for lack of sufficiency of freehold to the great hindrance of justice—it is therefore enacted, that every freeman being worth in moveable goods and substance to the clear value of forty pounds, be admitted in trials of murders and felonies, albeit they have no freehold.*" Thus, then, this statute provides a remedy in the cases of murders and felonies, by substituting a *personal*, for a *freehold* qualification. But it makes no provision for the case of *misdemeanors*; and why? Would not jus-

\* Cro. Eliz. 413.

† Raym. 466. S. C. Ventr.

\* 2 Hawk. 309, c. 25 s. 21. *ibid.* 353. c. 43. s. 12.



tice be delayed also in misdemeanors by the challenge for want of freehold, if competent to be made in such cases? Plainly, because freehold never was a necessary qualification in the case of misdemeanors in cities. If it had been, the statute would be quite preposterous to have substituted a pecuniary, for a freehold qualification in felonies, while it left misdemeanors to be tried only by freeholders. The legislature cannot be supposed to have felt more jealousy, or to require more chastity, or a higher degree of qualification in the case of a misdemeanor, than of a felony; and therefore it was, that the legislature did not extend the remedy to cases of misdemeanor, because in them the grievance did not exist. The grievance, however, still remained unredressed in civil cases, until the 27 Eliz. which, while it increased the freehold qualification in counties to 4*l.* a year, in all issues between party and party, provided, "that the juries of cities should be returned as had been accustomed," and thus, by both statutes, the saving of the common law in favour of city juries was restored, both in civil and criminal cases.

The point which I have thus urged was solemnly adjudged in the above-cited case of *Higgins*—it was debated by the judges of two courts, the King's-bench and Common Pleas, who unanimously held, that a freehold was not a necessary qualification for a juror in a city, upon the trial of a misdemeanor. That was a decision of great authority, Saunders presiding in one court, and Pemberton in the other. This decision was adopted, as a settled rule of law, in 3 Salk. 81, where it is laid down expressly, that when a jury are of a *town corporate*, it is no challenge, that they are not freeholders.

No alteration of the law, upon this subject, has been adopted in Ireland, from the reign of Henry 5, until the 29 Geo. 2, 6, which advanced the qualification of jurors to 10*l.* a year in *civil cases*, except in counties of cities and counties of towns; saving, even in civil cases, the usages of cities. Thus, then, in criminal cases in Ireland, the freehold qualification continues, both in counties and cities, to be governed by the stat. 2 Hen. 5; that is, in felonies, the jurors must have freeholds of forty shillings by the year. But that statute leaves misdemeanors as at common law.

But it is said, that *Higgins's* case goes too far; that it lays down as an universal proposition, that jurors are not required to be freeholders in corporations, whereas the Bill of Rights requires, that "jurors which pass upon men's lives in *treason*, shall be freeholders." But the answer is, that the court in *Higgins's* case, was treating only of the case of misdemeanor; that the observation must be understood *secundum subjectam materiam*, and the extent and generality of their expressions must be controlled by the case before them. So the judges in that case said, that 2 Hen. 5, extended only to cases between *party and party*, although they knew, that it extended also to

capital cases; but the Court cite only so much of the statute as answered their present purpose, confining themselves to civil cases; and accordingly they add "that no such challenge was ever made at *Nisi Prius* at Guild-hall."

It is also said, that if in treason, the jurors should be freeholders, in cities as well as in counties, as the Bill of Rights declares, then the common law rule, that "want of freehold is a good cause of challenge to a juror in a city," is not universally true. But, as I understand it, that exception, in favour of treason, did not exist at the common law, but arose from the construction given by the highest authorities, to the stat. 2 Hen. 5. In Stamf. p. 162, a. it is laid down, that all cases where a man is arraigned for his life are within the express words of that statute. And in *Russell's* case (which I would not cite, save where the point was ruled in favour of the prisoner) the counsel on both sides and the Court, one and all agreed, that the stat. 2 Hen. 5, extended to treason and every other capital case. So that it was, in truth, the liberal construction of the stat. 2 Hen. 5, which gave the challenge for want of freehold in cases of treason in cities and towns. The 23 Hen. 8, repealed the 2 Hen. 5, as to the freehold qualification in cities, as far as murders and felonies, but it left untouched, both treasons and misdemeanors. It left treasons as they stood under the settled construction of the stat. 2 Hen. 5, and it left misdemeanors as they stood at common law.

It is observable, that the Bill of Rights does not allude to misdemeanors; although some scandalous and corrupt cases of misdemeanors took place about the period of *Russell's* and *Sydney's* trials, or shortly after—particularly the case of Mr. Hampden,\* who was fined 40,000*l.* by *Jefferies*. So also the case of the Seven Bishops;† and other interesting cases of misdemeanor, in which the liberty of the subject was deeply interested! The Bill of Rights condemns extravagant fines in cases of misdemeanor; and being enacted at a time when the public pulse beat high in the great cause of civil liberty, that second *Magna Charta* would not have limited the challenge to treason, if it could have extended the challenge to the case of misdemeanor. *Expressum facit cessare tacitum*—the omission of misdemeanor amounts to a volume, to show, that the challenge did not apply in a case of misdemeanor tried in a city. The Bill of Rights declares, that in *treason*, the jurors ought to have freeholds. Why not so declare, in the case of any other offence? I can discover no other reason, but that in murders and felonies, the 23 Hen. 8, repealed that challenge in cities; and because in misdemeanors, want of freehold never existed in cities as a cause of challenge.

Upon the whole, I am of opinion, that the pleas in this case cannot be sustained, and that the demurrer should be allowed.

\* 9 How. St. Tr. 1053.

† 10 How. St. Tr. 183.

Mr. Justice Dally.—The present case is of such extreme importance, that I shall be excused, if I occupy a small portion of time in giving my opinion upon the question which has been argued. I will not take up time in discussing the challenge to the favour. It is clear from authority, that such a challenge is without any foundation whatever. My lord chief justice has detailed the cases, and I think, that no answer can be given to what he has said, and to what was said at the bar by the counsel for the crown. Therefore, it would be a waste of time to go into that question at all.

But with regard to the plea for want of freehold, it is necessary to say something. In taking the demurrer, the attorney-general has admitted, that at the common law, want of freehold was an objection to a grand juror in a county at large, but he contends, that by the common law, no such objection lay either to a grand, or petit juror in cities, or other towns corporate. In support of this opinion, he argued that the qualification of a grand juror did not, in its nature, originate from the value of his property; but from his quality and condition in the state; namely, that he should not be a villein, or a bond man, but free. That in counties at large, this his condition was ascertained by the nature of his tenure, and it was from thence, that he, and he only, who had *liberum tenementum* was *liber et legalis homo*, so far as related to counties at large; and he illustrated this position by an observation, which is true in point of fact, that by the common law, in cases even where freehold was necessary to constitute a juror, no particular amount in value was ascertained—but, as to corporations, he contends, that the same criterion to ascertain who the *liber et legalis homo* was, who was competent to serve on juries, could not be applied, that the persons incorporated were made free by the king's charter, and endowed with privileges for the purpose of encouraging trade; that the lands on which the corporate town stood were anciently the estate of the corporation, and not of the individuals who composed it, and that if a frank-tenement were necessary to qualify a juror in such corporations, there would be an absolute failure of justice, there being very few of those corporations which could furnish sufficient—and some which could furnish no freeholders at all.

This reasoning, taken abstractedly, has very considerable weight. But it is the duty of the Court to see, whether these principles have been recognized by the legislature, or the courts of justice.

In taking notice of the authorities which have been referred to, I shall begin with lord Hale. In his 2 vol. Pl. Cor. he has this observation; speaking of grand jurors, he says, "Touching their *animus census* I find nothing determined, but freeholders they ought to be." It appears plain, from the context of Hale, that in this part, he is speaking of jurors of

counties at large, for he gives the form of the precept which issues from the justices of Oyer and Terminer, or of the peace, to the sheriff; by which it appears, that twenty-four *liberi & legales homines* are to be summoned from every hundred, out of which the grand jury are to be taken and sworn; and then, he says, "Touching the grand jury, thus returned, they must be *liberi & legales*, and freeholders they ought to be"—evidently meaning the jury of a county at large—for the precept, as stated by him, requires a certain number of *hundredors*, and there are none of that description in cities or towns. Therefore, in this passage, he seems not to have adverted at all to the case of corporate towns; but to have confined his view of the subject to counties at large. And therefore, this passage which has been so strongly pressed by the counsel for the traverser, is not decisive upon the question before the Court.

I shall next advert to what sergeant Hawkins says upon this question. In his 2nd book, ch. 43, s. 12, we find the following position. "At common law," says he "there was no necessity, that jurors should have any freehold in cities or burghs." But in this part of his work, he does not seem to be very consistent; for in the same section he says, "It hath been adjudged, that the common law did not require that a juror should, in any case, have any freehold. But this is contrary to all the authorities, for it seems to be settled at this day, that the want of freehold is a good challenge of a juror in all cases, not otherwise provided for by the statute, and consequently in a trial for high treason in London, as well as in any other county." Evidently implying, that by the common law, jurors should be freeholders in cities, towns and boroughs, contrary to what he had said in a former part. Therefore, neither Hale nor Hawkins can be said to afford us much light in either of the foregoing passages. In another passage, 2 Hawk. c. 25, sect. 19, Hawkins says, "I do not find it any where holden, that none but freeholders ought to be returned."

The first statute which required a freehold of a certain value, as a qualification of a juror, is the stat. Westm. 2, c. 28. The mischiefs which it intended to remedy, are recited in it—"that sheriffs, hundredors and bailiffs of liberties have used to grieve those which be in subjection to them, putting in assizes and juries, men diseased and decrepid," &c. and it prohibits persons of this description from being returned, nor any put upon juries within the county, that may depend less than twenty shillings yearly, or if they are to serve without the county, then their tenements must be of the yearly value of forty shillings, and the penalty is imposed upon sheriffs, and other officers, who act to the contrary. The object of this statute, plainly, was not for the purpose of ascertaining the qualification of jurors—it did not touch that—but it was to relieve jurors from the oppressions of sheriffs and other returning officers, and therefore, it has been al-

ways held, that if any persons be returned, contrary to the provisions of the act, they cannot be challenged on that account, nor can the party grieved allege such matters in his discharge; but the jurors are to take their remedy by action against the sheriff, or other officer so offending. The qualifications, therefore, of the jurors, remained in my apprehension, notwithstanding that act of parliament, as they were at common law. This act exempts such as are there described, but if they thought fit to waive the benefit of the act, and were willing to serve upon juries, they could not be challenged upon the grounds mentioned. Therefore this statute does not furnish an objection to a grand juror in such a case as the present.

The next statute is 21 *Ed. 1. De iis qui ponendi sunt in iudiciis*, and is made *in pari materia* with the former; it requires, that jurors should have tenements to the value of forty shillings yearly; but it contains an express exception of cities, boroughs, and other trading towns "where the same was to be done as was accustomed." Hawkins says, that this exception is likewise mentioned in the writ in the register, which seems to be grounded on both these statutes. I have looked into the writ, *Fitz. N. B. 166*, and I find it to be so.

The observation of Hawkins upon both these statutes, is, that neither by the common law, nor by them, was there any necessity, that jurors should be freeholders in cities and boroughs, and that there seems no greater necessity that Grand jurors should be freeholders. I have already observed that Hawkins is not consistent with himself.

Hitherto, I have discovered nothing to diminish the force of the argument of the attorney-general, arising from the nature of the thing and the inconvenience to public justice in cities or towns, if the want of freehold were a good cause of objection to a juror, in such places; it still rests upon its native strength, and I think, derives aid from a position in *Co. Litt. 155, a.* who says, "he that is of a jury, must be *liber homo*, that is free and not bound."

I come now to a statute, which may be said to be the first which made any alteration in the common law, respecting the particulars now before us. I mean the stat. 2 Hen. 5th, c. 3, which enacts, "that no person shall be admitted to pass in any inquest upon trial of the death of a man, nor in any inquest between party and party, in plea real, nor in plea personal, whereof the debt or damage declared amount to forty marks, if the same person have not lands or tenements of the yearly value of forty shillings above all charges of the same," &c. making such defect a cause of challenge. This statute, so far as it concerns criminal proceedings, comprehends capital cases, extending to high treason, and certainly was held to include counties corporate; but it leaves misdemeanors, as they were at common law; and thus the law stood,

until the 28 Hen. 8th, c. 13, which recites "that trials in murder and felonies in cities, boroughs and towns corporate, within this realm, &c. had been oftentimes deferred and delayed by reason of challenge of such offenders for lack of sufficiency of freehold, to the great hindrance of justice," and it enacts the provisions, which have been mentioned.

Now, some very important observations arise upon this act. What the inconvenience was, is perfectly plain and manifest—it arose from the paucity or non-existence of freeholders in such places—an inconvenience which would apply to misdemeanors, in its full force in corporations where there were no freeholders, and in some degree to most of the corporations in the kingdom. The act is plainly intended to repeal the 2 Hen. 5th, so far as it concerned felonies and murders, and it seems to me to be a fair inference, that the stat. of Hen. 8th, did not enact upon the subject of misdemeanors, because, in fact, at the time of its enactment, the objection for want of freehold in cities and towns was not considered as valid in such cases. Why it did not exclude high treason is not very easy to conceive. The inconvenience there was enormous, in consequence of the greater number of peremptory challenges:—It is very probable, it was a *casus omnisus*, trials for high treason not arising very frequently, and this idea is in some degree corroborated by the stat. 2 Phil. & Ma. c. 13, which enacts, That all trials for treason shall be according to the course of the common law. And it has been held to repeal the 2 Hen. 5th, in cases of treason.

It is, however, contended on the part of the traverser, that the 2 Hen. 5th, went only to increase the value of the qualification in the cases to which it applies, but that by the common law, a freehold of some kind or other was necessary in all cases whatsoever. I have already observed upon what may be said in answer to that, as arising from the nature of the thing, and the nature of corporations; and now, I come to the authorities upon the subject. As to that, the case of the *King v. Higgins*, is in point against the traverser; so far as it may be considered as authority: I shall not state it; because it has been fully stated already. It states, broadly and generally, that at common law, the want of freehold formed no objection to a juror, in counties corporate:—there is no qualification of the assertion in any respect. The case, then, before the Court, was a misdemeanor: its attention was naturally turned to that species of offence, and although its expressions are general, yet it will not be a very great stretch, to say, that the decision should be confined to the case then before the Court.

This case, however, was relied upon by the counsel for the crown is *lord Russell's case*; and although the judges who presided in that case, do not appear to have stated it, in giving their opinion, yet they held that a want of freehold was no challenge in a city in a case of high treason. It is very well known, however,

that the judgment in the case of the *King v. Lord Russell*, has been declared illegal by several acts of parliament, particularly by the Bill of Rights, which expressly declared, that, in the cases of treason, the want of freehold is a good cause of challenge in counties corporate. But this declaration is confined to the case of treason; it leaves the case of misdemeanor untouched; and yet there were many cases of that description, connected with the state, which would require the interference of the legislature, if it held the objection legal and valid in such cases. It is farther to be observed, that the inconvenience was much greater in permitting the objection to prevail in the case of treason, than it could be in misdemeanors; for in the former case, the number of peremptory challenges would make it impossible to find jurors in some corporations at all. This inconvenience would not exist in such force in the case of misdemeanors, in which there were no peremptory challenges.

Here then is a legislative declaration which certainly shakes the general position laid down in the case of the *King v. Higgins*, but does not touch the point which it directly decided; and I cannot therefore bring myself to reject it altogether as authority, for it appears to me not to be affected, so far as it respects the case of misdemeanors.

As to the Irish acts which have been mentioned, they do not make any impression upon me. It has been very well said by my lord chief justice, that the stat. 2 Hen. 5, is altogether unrepealed with respect to this country; and the stat. 2 Ph. & M. having passed after Poyning's law, may account for the practice prevailing in particular corporate towns in Ireland, of requiring freeholders upon juries; and we must suppose that these local acts were intended to remedy the local inconvenience, and furnish no proof that the objection, for want of freehold in a corporation, was suffered to prevail, as being founded in the general law of the land. It appears, that the objection being allowed in those particular towns was a grievance which is remedied by these several statutes in the respective towns to which they apply. But, with respect to other towns, how far such objections were allowed does not appear, but no regulation has been enacted with respect to them.

Upon the whole, therefore, although I will not take upon me to say that this question is entirely clear of all doubt and difficulty; yet it is sufficient (supposing it even to be more difficult) to deter me from upsetting the practice of ages in this and other corporations, from introducing into the grand jury a very inferior class of freeholders in the place of the most wealthy and respectable corporators; from creating that obstruction to criminal justice which obviously arises from allowing the objection which must impede the administration of justice in many towns, and in some cases altogether. For these reasons,

I am of opinion that the demurrer ought to be allowed, on the question of freehold. Upon the other question, I have no doubt whatever.

Mr. Justice Osborne.—I am very sure that I might, with great safety, rest my opinion upon the reasons which have been already given. However, as my brethren have thought it right to give theirs, it may be expected that I would give mine, which I will very shortly, referring, in general, to the illustrations of the subject, as detailed by those who have preceded me:—my opinion being in accordance with the opinion of my brethren.

I agree with my brother Daly, that, upon the first question, respecting the objection to the *favour*,—it is decided by the authorities already cited, and it is not necessary to enlarge upon it.

The other plea is deserving of more attention. The plea amounts to this, that a freehold is indispensable as a qualification of a juror, in a case arising within a city jurisdiction. This position is in itself, contrary to the experience we all have of what daily takes place in this, and other cities; and, by no research has it been found, that, till this day, the necessity of such qualification was urged here, or in England, so as to have furnished a judicial decision upon the point;—and we now find that the whole of the argument is rested upon a general assertion, “that every juror must be a freeholder,”—and this general proposition, supported, as is alleged by the authority of Hale, although, upon looking into his book, it is evident that, in the passage cited, his mind was not directed to the matter of this exception; as it there manifestly appears from his mode of treating the subject, that it was a *general* proposition only respecting counties at large, the truth of which is not now questioned. It is not in that passage, as appears by the context, to be taken as a proposition *universal*; nor is any reference whatever made to juries in cities, and yet we find that the whole basis of the argument here depends upon that opinion, and the inference attempted to be drawn from Blunt's case; and which that case does not warrant, as already shown by those who have preceded me. When, therefore, the practice has been uniform the other way, and where the research of all the bar has not discovered a decision in support of the universality of the proposition, so as to make the same qualification necessary in *cities* as in *counties*, I cannot go the length of saying now, for the first time, that in the city of Dublin, the possession of a freehold is a necessary qualification of a juror.

As a general proposition, affecting counties at large, it is admitted; and there are satisfactory grounds for acceding to it; and according with lord Hale's doctrine, as a general rule, in all such cases.

But when we seek to extend this rule from counties at large to cities and corporate towns having certain jurisdictions, authority fails us, and the very silence of the books cannot fail

to make this impression upon the mind, that no objection, upon the ground of want of freehold, was conceived to exist in a city or town corporate.

Thus far there is strong ground to favour the opinion, that freehold is not a necessary qualification—nor ever was so considered, in a city or town corporate. But when we come to investigate the matter farther, the first and most obvious inquiry is, as it strikes me, that if it be said to be grown into usage, upon what reason and basis can it stand?—This is the natural inquiry as to the existence of the rule at common law. Now, if we examine it as a reasonable rule, we shall find, at this day, when property is so generally diffused, that if a freehold were an indispensable qualification for every juror, in every jurisdiction, there would be a complete failure of justice in many, and in some very extensive jurisdictions; and the very end for which juries were established would be defeated in instances so numerous and so obvious, that it is scarce necessary to mention them. But if we refer back to the period before Edw. 1, I think it manifest, that it would not be practicable to carry on the administration of justice in cities or towns, if freeholds were there necessary for jurors. Nor would it be possible that, in practice, such an usage would take place—and yet, without any express authority, we are called upon to say, on account of a general proposition, certainly not an universal one, that, at common law, it is settled that a freehold is an indispensable qualification for a juror in a city, a position which would destroy his functions the very moment that he is called into action; and farther, we are called upon to say that this rule is founded in practice, when we see that such a practice must have been impossible.

Now consider whether, in this inquiry, any thing can be collected from the early statutes which can throw light upon the subject. In my apprehension considerable light is obtained from the early statutes, and the inferences which they afford. The stat. 21 Ed. 1 states the mode adopted by the legislature for the relief of the poorer classes, who were forced on juries by the sheriffs, and puts a higher qualification upon jurors, "saving to cities, &c. their ancient usages as to juries."—Now it appears to me to be no strained inference from this, to say, that the legislature recognized the usage which at that early period prevailed in cities, as differing in some way or other from the usage which prevailed in counties. If the object of the legislature on this statute was, as has been argued, to increase the annual amount of freehold qualifications in counties, without dispensing with, but retaining the original qualification of some freehold in cities and towns, it would have been more obvious to have excepted them, in direct terms, from the increased qualification, than to have excepted cities in the manner it was done. The words imply something very different; they

recognize an usage in cities different from that in counties; and I think that the subject matter of the statute leads to the conclusion, that other qualification than freehold property was admitted in cities and towns corporate; because the evil which arose from the partiality of sheriffs, in summoning the inferior classes, was general, and called for a remedy in cities and towns as much as elsewhere; yet it allows to cities and towns their accustomed mode, and does not think fit to require a freehold of any annual amount, but leaves them to their accustomed qualification, which, it is reasonable to presume, did not give rise to the mischiefs which prevailed in counties at large.

This accounts for the exception in the statute.—The legislature did not require a freehold qualification, from an apprehension of a failure of justice, and found the accustomed qualification in cities, a sufficient guarantee against the mischief the statute meant to remedy generally.

There is also another statute of an early date, which affords a strong inference that the legislature, at that period, did not consider freehold as a necessary qualification of a juror in a city or town corporate. It is the 27 Eliz. which contains, also, a saving in favour of cities and corporate towns, of their former rights of returning juries. Now, the object of this act, in which this exception is made, was to oblige sheriffs, in all cases, to summon freeholders, according to the nature of the subject to be tried; either of the increased qualification, in which case, there was a *quorum quilibet* clause in the precept; and in other cases, those having freehold of any annual amount:—but that it should be otherwise in cities, &c. which are left to their accustomed usage. This furnishes an additional ground of inference that the legislature did not consider freehold as a necessary qualification for a juror in a city; and this inference does not admit of the answer which was given to the exception in the prior statutes, namely, that it only meant to except cities from the increased qualification; for this act operates upon the old interpretation of simple freehold of no ascertained amount, and yet juries in cities, &c. are excepted.

I think, also, that the opinion of sergeant Hawkins is (although there is some confusion, if not contradiction, in his treatise upon this subject), that a freehold is not a necessary qualification in a city. His authority is certainly great, and his mind was directed to the very question, at the time that he was laying down the positions. The authority of lord Hale, no doubt, is very great; but his mind was not directed to the particular question at the time when he laid down the general proposition, not to the subject of juries generally, to take it most strong, but, as I conceive, to the subject of juries in counties only.

I shall not, certainly, because it would be to little effect, repeat the observations which have been made upon the other statutes, and which have been impressed as illustrative of

the question by those who preceded me. I shall, therefore, rest my opinion upon the reasons which have been given—from inferences rationally drawn from the acts of parliament—from the silence of the books—from the want of any authority to show the necessity of this qualification in a city:—even Hale is silent in this particular respect.

But I may add the practice which has uniformly prevailed—and the reasoning in the case of the *King v. Higgins*, as equally tending to show that the affirmative of the proposition is not supported. I consider the case of the *King v. Higgins* as standing upon as high authority as any case in the books can stand. It is the opinion of certainly one of the ablest lawyers; and, in my mind, there has not been any thing said, to do away the effect of that opinion, nor can we attribute to the judge who pronounced it, any improper use which was subsequently made of it by others—he gave that opinion with the concurrence of his brethren sitting in that court; and he did not act like a man anxious to enforce his own opinion, for he communicated with his brethren of another court, and had the concurrence of their opinion. Therefore, it is the opinion of two courts; and I do not consider that this opinion has been affected by the Bill of Rights, because, in my judgment, it would be an extraordinary construction of a declaratory law to go an *iota* beyond the declaration itself. We have no reason assigned to show the foundation of the judgment or declaration in such a case. No man can controvert a declaratory law; but it would be dangerous to carry it farther than the very matter which is declared to be law. All it says is, that in cases of *high treason*, a freehold qualification is necessary—to that I implicitly submit. But it does not affect the case of the *King v. Higgins*, which was no such case. Demurrer allowed.

*Mr. Attorney General*.—Now, that your lordships have disposed of the objections, which occupied so much of the public time, I am to apply to the Court, to fix an early day for the trial of these traversers. If there be no objection, I beg, that the trials may proceed on Wednesday, which will give as full and reasonable time, as can now be expected, and will leave only sufficient time, if it shall be necessary to make any motion after the trial. With regard to the traversers, they cannot complain of the time which has elapsed; the bills of indictment were found on the second day of the term, and but for the challenge and the other objections, which are now determined to be without foundation, the trials would have proceeded before. The delay, therefore, is imputable to themselves, and not to those who are concerned for the crown.

*Mr. Burrows*.—My lords, on the part of the traversers, I am instructed, as before, to express a desire on their part, that the term should not elapse without a trial; at the same time, I wish to suggest, that it will be neces-

sary to bring witnesses from distant parts. I do not mention this, by way of difficulty to either party; but to induce the Court to appoint as late a day, as they can, consistently with a trial being had. As to the delay imputed, we submit to the judgment of the Court upon the objections which were made; but still the Court thought they required a solemn judgment, which shows, that they were not frivolous.

*Mr. Attorney General*.—I did not say, that they were frivolous.

*Mr. Burrows*.—You did not—but the Court pronounced a solemn judgment, and nothing was more reasonable, than that the traversers should refer such questions to an accurate discussion; and consistent with such a discussion, there has not been any delay. The object now is, to be prepared, and the time granted may be compensated by the brevity of the defence. It is a short time to allow three days only—whereas, if the trial had been by information, there must have been fifteen days notice of trial.

*Mr. Justice Daly*.—Some preparation ought to have been made, with a view to the event of the plea being over-ruled.

*Mr. Burrows*.—My lord, we are not altogether without preparation.

*Lord Chief Justice*.—There is nothing laid before us by affidavit to show any inconvenience in appointing Wednesday for the trials.

*Mr. Attorney General*.—My lords, there ought to be four days after a trial, before judgment can be pronounced; therefore a day or two later might prevent the matter terminating this term.

*Note*.—[After some further conversation, Thursday, the 21st of November, was agreed upon for the trial.] Adjourned.

Thursday, 21st November, 1811.

The Court sat at Ten o'clock.

*Mr. Attorney General* said he would proceed first in the trial of Dr. Sheridan.

The Sheriffs returned their panel of jurors, which was called over, and those who did not appear were called a second time upon fines.

*Benjamin Geale*, merchant, as the first who answered, was called to be sworn—

*Mr. Burrows*.—My lords, I desire to ask the gentleman, whether he has formed any opinion upon the subject of this trial, or has declared any opinion upon it.

*Mr. Attorney General*.—My lords, I object to this mode of interrogating a gentleman called to be sworn upon the jury.

*Mr. Geale*.—My lords, it is a ruled case, that with respect to any thing not touching the

honour, or integrity of the juror, he may be interrogated.

*Lord Chief Justice.*—It has been ruled over and over again, that a juror cannot be asked, whether he has declared an opinion. The objection made must be proved as a cause of challenge.

*Mr. Gould.*—If your lordship states it has been so ruled, we cannot persevere. But I beg leave to say, that it was asserted by lord Erskine, when at the bar, upon the trials, in 1794, of John Horne Tooke, Hardy and others, and it was conceded by the counsel for the crown and by the Court, that a juror might be asked as to any matter, not affecting his honour or integrity; and in the course of my experience, I have known it often done.

*Lord Chief Justice.*—It has been ruled otherwise over and over again.

*Mr. Gould.*—Your lordships having said so, I submit.

*Lord Chief Justice.*—All that we can do is, to determine, whether an objection made, be legal or not.

*Mr. Burrows.*—My lords, we cannot prove the fact; but the counsel for the crown should consent to the objection.

*Mr. Benjamin Geale, was then sworn.*

*Peter Digges Latouche, esq. sworn.*

*John Roche, merchant, set by on the part of the crown.*

*John Lindsay, merchant, do.*

*Bartholomew Mariere, merchant, do.*

*Leland Croothwaite, merchant, sworn.*

*John Orr, merchant, sworn.*

*Richard Darling, merchant, set by on the part of the crown.*

*John Duncan, merchant, sworn.*

*William Hutton, merchant, set by on the part of the crown.*

*Thomas Thorpe Frank, merchant, do.*

*Francis Beggs, merchant, do.*

*Alexander Jaffray, merchant, do.*

*John Pepper, merchant, sworn.*

*Patrick Marsh, merchant, set by on the part of the crown.*

*Martin Hynes Geoghegan, merchant, do.*

*William Sparrow, merchant—*

*Mr. Burrows.*—My lords, I am told, that this gentleman is a sworn Orangeman. I do not like to mention the matter—but it is a character which has been too well known in these latter times:—from the nature of the oath taken by such characters, he must of necessity be inimical to the traverser, and the religion he professes.

*Mr. Attorney General.*—My lords, I really do not know what the objection is, which is made to the juror.

*Lord Chief Justice.*—If there be an objection made in legal form, we will give our opinion upon it.

*Mr. Gould.*—My lords, the objection we make is, for malice against the traverser. I should be sorry to take up the time of the Court. We submit our objection to the consideration of the attorney-general, and we say, that the oath of an Orangeman renders him decidedly hostile to every Catholic, and to the traverser in particular.

*Lord Chief Justice.*—Do you take a challenge or not? Because throwing out assertions of this kind can answer no purpose.

*Mr. Gould.*—My lord, we do challenge *ore tenus*: which the clerk of the crown will take down; and to which Mr. Attorney General will either plead, or demur. I tender this challenge—"And the said Edward Sheridan comes in his proper person, and says, that the said William Sparrow stands not indifferent, as he stands unsworn, but bears malice against the said Edward Sheridan and this he is ready to verify." I take this challenge *ore tenus*.

[The challenge thus taken was written by Mr. Bourne, deputy clerk of the crown.]

*Mr. Attorney General* joined issue upon the challenge, and desired that triers might be sworn.

*Mr. Gould.*—I hope the crown will not appoint every thing in this cause.

*Mr. Attorney General.*—My lords, I do hope that Mr. Gould will spare his insinuations. The law appoints the triers in such cases as the present, and not the counsel for the crown.

*Lord Chief Justice.*—The course is, that if a challenge be taken before any jurors are sworn, then some of the officers of the Court are appointed triers: but if the challenge be taken, after some of the jurors are sworn, then two of the jurors, so sworn, are to be the triers of the issue upon the challenge.

[Messrs. Geale and Latouche were then sworn to try the issue depending in court upon the challenge taken to William Sparrow, and a true verdict to give, according to the evidence.]

*Mr. Gould.*—My lords, we will now produce Mr. Sparrow himself, to prove, that he is an Orangeman, and that the oath which he has taken, is hostile to the Catholics of Ireland.

*Lord Chief Justice.*—If this matter be assented to, on both sides, the Court will not interfere; but I do not wish to have it understood, that any man can be permitted to be examined, in this way, to matter which would show him to be unworthy.

*Mr. Attorney General.*—My lords, we do not object to his being sworn; but if any improper question be put, we will then object, and the Court will determine, whether he is bound to answer.

[Mr. Sparrow was then sworn to make true

answer to such questions as should be asked of him.]

*Mr. Attorney General.*—My lords, he must be sworn to tell the truth and the whole truth; for he is produced, as a witness, to give evidence upon an issue in fact: If he shall be asked, whether he himself bears malice to any man, we will object to the question.

*Mr. Barrowes.*—My lords, I do not wish to consume time. Our object unquestionably is, to examine this gentleman himself; to acknowledge upon his oath, or deny, that he is a member of a certain society, and as such has taken an oath which of necessity renders him hostile to the traverser.

*Mr. Justice Day.*—To acknowledge that he had taken such an oath would subject him to an indictment for a serious offence.

*Mr. Barrowes.*—My lords, we may proceed to a certain extent in examining him: the maxim, *nemo tenetur seipsum prodere*, does not go to prevent our proving a link of a chain leading to a fact which we may prove by other evidence. Therefore, I am warranted in asking him every question, but one, whether he took such an oath, or not.

*Mr. Attorney General.*—My lords, this being avowed, I must, in point of propriety, object to the gentleman being sworn, *in chief*. The issue is, "that he bears malice against the traverser." The person so charged to bear malice, cannot be examined to establish such an issue. We did not object to his being sworn upon the *voire dire*; but we object to his being sworn to give evidence against himself.

*Lord Chief Justice.*—He cannot be examined to any thing which would criminate himself, or that would make him disreputable; but he may be examined to some extent.

*Mr. Attorney General.*—My lords, the rule of law upon this subject is agreeable to common sense. The juror could not be examined to prove his own declarations, if he had made any, against the traverser. He could not be examined even upon the *voire dire*, whether he bore malice against the traverser, because it sounds to his reproach.

*Mr. Barrowes.*—My lords, I admit, that it would be wasting time to press this challenge, if the counsel for the crown object to *Mr. Sparrow* being sworn; because we have no other evidence, but what may come from his own examination. If nine other Orangemen be called upon the jury, we will not object to them. We appeal to the candour of the attorney-general, whether he will consent to this gentleman being set aside.

*Mr. Gould.*—My lord, we withdraw the challenge.

*William Sparrow* was sworn.

*Robert Orr*, merchant, set by on the part of the crown.

*Thomas Meade*, merchant, do.

*Richard Williamson*, merchant, do.

*James Jameson*, merchant, do.

*Thomas Prentice*, merchant, do.

*Nicholas Wade*, merchant, do.

*John Hutton*, merchant, sworn.

*William Humphries*, merchant, set by on the part of the crown.

*James Chambers*, merchant, do.

*William Wood*, merchant, do.

*James Jackson*, merchant, do.

*Robert Armstrong*, merchant, sworn.

*Edward Clibborn*, merchant, do.

*Charles McKernan*, merchant, set by on the part of the crown.

*Francis Richardson*, merchant, do.

*Charles Pentland*, merchant, sworn.

*John Hamilton*, merchant, sworn.

*Mr. Barrowes.*—With respect to the gentleman last called, we have only to state that he has dealings with the Castle. We submit it to the counsel for the crown, whether he should be sworn. We acknowledge that we have no legal cause of challenge.

#### THE JURY.

*Benjamin Geale,*  
*Peter D. Latouche,*  
*Leland Crosthwaite,*  
*John Orr,*  
*John Duncath,*  
*John Pepper,*

*William Sparrow,*  
*John Hutton,*  
*Robert Armstrong,*  
*Edward Clibborn,*  
*Charles Pentland,*  
*John Hamilton,*

To whom the traverser was given in charge upon the following Indictment, to which he had pleaded, on the 11th of November, as before-mentioned. *Vide ante* p. 576.

"County of the City } THE jurors of our lord  
of Dublin to wit. } the king upon their oath  
present, that on the 9th day of July, in the year  
of our Lord 1811, at Fishamble-street, in the  
County of the City of Dublin, divers persons,  
to the said jurors unknown, assembled them-  
selves together, and being so assembled, and  
then contriving, and intending to cause and  
procure the appointment of a committee of  
persons professing the Roman Catholic reli-  
gion, to exercise an authority to represent  
the inhabitants of Ireland, professing the  
Roman Catholic religion under pretence of  
causing petitions to both Houses of Par-  
liament for the repeal of all laws remaining  
in force in Ireland, by means whereof any  
person professing the Roman Catholic reli-  
gion is subject to any disability, by reason of  
in consequence of his religious tenets, and also  
under pretence of procuring an alteration of the  
said matters so established by law, did then and  
there, amongst other things, enter into certain  
resolutions of and concerning such committee,  
and of and concerning the said laws so re-  
maining in force in Ireland, and of and con-  
cerning certain districts in the city of Dublin,  
called parishes, and used as such, for the pur-  
pose of public worship, according to the rites  
of the Roman Catholic religion, of the purport



and effect here following, that is to say, that a committee of persons professing the Roman Catholic religion (meaning such committee as aforesaid) should be appointed and requested to cause proper petitions to both Houses of Parliament to be forthwith prepared for the repeal of the penal laws (meaning the said laws so remaining in force in Ireland) and to procure signatures thereto in all parts in Ireland, and to take measures for bringing such petitions under the serious consideration of the legislature, within the first month of the ensuing sessions of parliament, and that such committee should consist of the Catholic peers, and their eldest sons, the Catholic baronets, the prelates of the Catholic church in Ireland, and also ten persons to be appointed by the Catholics, in each county in Ireland, the survivors of the delegates of 1793, to constitute an integral part of that number, and also of five persons to be appointed by the Catholic inhabitants of each parish in Dublin (meaning each district so called a parish as aforesaid) and that Edward Sheridan, late of Dominick-street, in the county of the city of Dublin, doctor of physic, being a person professing the Roman Catholic religion, and divers other persons professing the Roman Catholic religion, to the said jurors unknown, well knowing the premises, but being ill-disposed persons, and unlawfully contriving and intending to aid, and assist in, and towards the constituting and forming of such committee, as aforesaid, on the 31st day of July, in the said year 1811, at Liffey-street, in the county of the city of Dublin, in order to comply with such resolutions, and to aid, and assist in, and towards the constituting and forming of such committee, did meet and assemble themselves together, for the purpose of appointing five persons to act, as representatives of the inhabitants, professing the Roman Catholic religion, of, and in one of the districts in the city of Dublin aforesaid, commonly called the parish of St. Mary, in the said committee, so proposed to be formed, and that at, and in the said meeting, so then and there held, for the said purpose one Thomas Kirwan, then and there being a person professing the Roman Catholic religion, was then and there unlawfully appointed by the said persons, so then and there assembled, to act as one of the representatives of the said inhabitants of the said district, in the said committee so proposed to be formed, and that the said Edward Sheridan, then and there, with force and arms, knowingly, wilfully, and unlawfully, was one of the persons so assembled, and then and there acted as chairman, and then and there as such chairman, proposed as a question to the said meeting, whether the said Thomas Kirwan should be appointed or not, and on the said question being put, the said Thomas Kirwan was then and there so appointed by the said persons as aforesaid; and so the said jurors say, that the said Edward Sheridan, in manner aforesaid, then and there acted at and in the said appointment, to the great encouragement of riot, tumult and dis-

order, to the evil example of all others in like case offending, and against the peace of our said lord the king, his crown and dignity, and against the form of the statute made and provided.

*Second Count.*—"And the said jurors of our said lord the king further present and say, that Edward Sheridan aforesaid, so being a person professing the Roman Catholic religion, together with divers other ill-disposed persons professing the Roman Catholic religion, on the 31st day of July, in the year of our lord, 1811, at Liffey-street, in the county of the city of Dublin, met and assembled themselves together, for the purpose of appointing five persons to act as representatives of all the inhabitants professing the Roman Catholic religion, of and in a certain district, there situate, commonly called the parish of St. Mary, in a committee of persons professing the Roman Catholic religion, to be thereafter held, and to exercise a right and authority to represent the inhabitants of Ireland professing the Roman Catholic religion, under pretence of preparing petitions to both Houses of Parliament, for the repeal of all laws remaining in force in Ireland, by means whereof any person professing the Roman Catholic religion, is subject to any disability, by reason of his religious tenets, and of thereby procuring an alteration of the said matters so established by law, and that at and in the said meeting so then and there held, one Thomas Kirwan then and there being a person professing the Roman Catholic religion, was then and there unlawfully appointed by the said persons, so then and there assembled, to act as one of the representatives of the said inhabitants of the said district, in the said committee to be so thereafter held as last aforesaid, under the said pretence, and that the said Edward Sheridan, then and there with force and arms, knowingly, wilfully and unlawfully was one of the persons, so then and there unlawfully assembled, and then and there acted as chairman of the said meeting; and then and there as such chairman proposed as a question to the said meeting, whether the said Thomas Kirwan should be so appointed by the said persons as last aforesaid, and so the said jurors say, that the said Edward Sheridan, in manner last aforesaid, then and there acted at, and in the said appointment last mentioned, to the great encouragement, of riot, tumult, and disorder to the evil example of all others in like cases offending, against the peace of our lord the king, his crown and dignity, and against the form of the statute in that case made and provided."

• The following is the statute, upon which the indictment was founded. "An act to prevent the election, or appointment of unlawful assemblies, under pretences of preparing, or presenting public petitions, or other addresses to his majesty, or the parliament.

"Whereas the election, or appointment of assemblies, purporting to represent the peo-

Mr. Kamnis opened the indictment.

Mr. Attorney General.—My lords; and gentlemen of the jury. I cannot but congratulate you, and the public, that the day of justice has at length arrived. I am sanguine in expecting, that the result of the proceedings of this day will be, to frustrate the designs of treason, and to give an effectual check to those extremes, to which faction and folly have of late proceeded.

The case of the traverser, Mr. Sheridan, which is before you, lies, itself, in a narrow compass, both with regard to the law, upon which the indictment is founded, and with regard to the facts, by which the indictment is to be supported. But the case connects itself with so many others, and with such a variety of matter, that if I shall find myself under the necessity of trespassing somewhat longer upon your time, than it has been my custom, or inclination to do, you will give me credit, when I say, that I shall do so, with a view to the public peace of the country; and in ardent expectation of allaying those discontents, and abating that fever and ferment, which treason and sedition have too successfully excited in the minds of many of his majesty's Roman Catholic subjects in Ireland.

The project, against which the present pro-

ple, or any description, or number of the people of this nation, under pretence of preparing, or presenting petitions, complaints, remonstrances and declarations, and other addresses, to the king, or to both, or either houses of parliament, for alteration of matters established by law, or redress of alleged grievances in Church and State, may be made use of to serve the ends of factious and seditious persons, to the violation of the public peace, and the great and manifest encouragement of riot, tumult, and disorder: Be it declared, and enacted, by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by the authority of the same, that all assemblies, committees, or other bodies of persons, elected, or in any other manner constituted, or appointed to represent, or assuming or exercising a right, or authority to represent the people of this realm, or any number or description of the people of the same, or the people of any province, county, city, town, or other district, within the same, under pretence of petitioning for, or in any other manner, procuring an alteration of matters established by law, in Church or State, save and except the knights, citizens, and burgesses elected to serve in the parliament thereof, and save and except the houses of Convocation duly summoned by the king's writ, are unlawful assemblies; and it shall and may be lawful for any mayor, sheriff, justice of the peace, or other peace officer, and they are hereby respectively authorized and required, within his and their respective jurisdictions, to disperse all such unlawful assem-

blies, and if resisted, to enter into the same, and to apprehend all persons offending in that behalf.

secution is levelled, is one which you will find detailed in certain resolutions entered into by an assembly, assuming to itself the denomination of "A General Aggregate Meeting of the Catholics of Ireland," held on the 9th of July last.

This aggregate meeting sprang out of a resolution of a committee, which is well known, I am sure, to every gentleman who hears me, which for the last eighteen months has been acting a very distinguished part indeed in this country, under the name of "A General Committee of the Roman Catholics of Ireland."

When I talk of treasonable motives, as connected with this measure, let me not be misunderstood. I am fully persuaded, that the great portion of the educated Roman Catholics of Ireland are loyal to their king, and have no intention of conducting themselves otherwise, than agreeably to the laws of their country;—nay, that many of them look with as much disgust, as any of us, upon the lawless and seditious proceedings which have been carried on for a considerable time past, falsely, under the name and authority of the Roman Catholics of Ireland:—nay, I will go farther, and most unequivocally declare my conviction, that a great proportion of those Roman Catholics, who have taken an active part in furtherance of this project, are loyal men, who

blies, and if resisted, to enter into the same, and to apprehend all persons offending in that behalf.

"II. And be it further enacted, that if any person shall give, or publish, or cause or procure to be given, or published, any written, or other notice of election to be holden, or of any manner of appointment of any person, or persons, to be the representative, or representatives, delegate, or delegates, or to act by any other name, or description whatever, as representative, or representatives, delegate, or delegates of the inhabitants, or of any description of the inhabitants of any province, county, city, town, or other district, within this kingdom, at any such assembly, or if any person shall attend, and vote at such election or appointment, or by any other means vote or act in the choice, or appointment of such representatives or delegates, or other persons to act as such, every person who shall be guilty of any of the said offences respectively, being thereof convicted by due course of law, shall be deemed guilty of a high misdemeanor.

"III. Provided always, that nothing herein contained shall extend, or be construed to extend to, or affect elections to be made by bodies corporate, according to the charters and usage of such bodies corporate respectively.

"IV. Provided also, that nothing herein contained shall be construed in any manner to prevent, or impede the undoubted right of his majesty's subjects of this realm, to petition his majesty, or both houses, or either house of parliament, for redress of any public, or private grievance."

mean nothing like treason or sedition:—but that they have been misled and duped by the artifices of those, whose designs they are not able to penetrate.

That many of them are young men of ardent minds, whose passions have been inflamed by engaging in a political pursuit; who are not actuated by any more criminal motive, than the vanity of raising themselves into notice:—and who yet by these acts and these speeches, are doing the work of the United Irishmen, in the cause of separation and revolution, not considering, that in the gratification of their vanity, they are endangering the public peace, and directly counteracting the object of that Catholic petition, of which they pretend to be the advocates.

That is the view which I have taken of the project which at this day has been formed, of calling a National Convention—a representation of all the estates of the Roman Catholics of Ireland.—I will now call your attention to the Resolutions of the aggregate meeting, which assumed to itself to be a general meeting of the Roman Catholics.

“At a Meeting of the Roman Catholics of Ireland, held in Fishamble-street, on the 6th of July, 1811.

“*Earl of Fingall in the Chair.*

1st. “That being impressed with the unalterable conviction of the undoubted right of every man to worship his Creator according to the dictates of his own conscience, we deem it our duty, thus publicly and solemnly to declare our decision, that no government can inflict any pain, penalty, or privation, for obeying that form of Christian faith, which in his conscience he believes to be right.”

That is the first resolution; the object of which you will plainly perceive is, to impress upon the minds of the Roman Catholics of this country, that they are at this day subject to pains and penalties for exercising their religion—a resolution not founded in truth, and calculated to mislead the loyal Catholics of Ireland.

The second resolution, is—“Resolved, that we again petition the legislature, for a repeal of the laws affecting the Catholics of Ireland.”

Gentlemen, the right of petitioning, and of preparing petitions, according to the laws of the land, there is no man in this country, who either did, or does dispute.

Their third resolution, is—“That, in exercising our undoubted right to petition, we will adhere to the ancient forms of the constitution.”

Fully aware of the law, against which they were at that instant about to offend, but professing at the same time their obedience to it,

Their fourth resolution, was,—“That a committee be appointed to inquire into the penal laws, and make a report within one month of the ensuing session of parliament.”

The next resolution deserves particular attention.

“That the committee to be appointed to prepare petitions to parliament, do consist, first of Catholic peers, and eldest sons of peers, and Catholic baronets; second, Catholic prelates; third, ten persons chosen from each county, and the survivors of the delegates of 1793, to form an integral part of that number; fourth, five persons from each of the parishes in Dublin.”

You will perceive what a formidable assembly was thus constituted—an assembly consisting in point of numbers, of between 4 and 500 persons, representing every estate of his majesty's Roman Catholic subjects in Ireland.—The peers—the clergy, and the laity. It was also resolved, that the appointment of these delegates should be made forthwith, and until this new body was formed, the management of Catholic affairs was confided to certain peers, baronets, and survivors of the delegates of 1793; so that until this “National Convention” should be assembled for the purpose of preparing the petition, and procuring signatures, the affairs of the Catholics should be managed by an *ad interim* government. This last resolution proving unequivocally, that this convention was not to be confined to the object of preparing a petition to Parliament, but was to have a general management of the affairs of the Roman Catholics of Ireland.

By the laws and constitution of this land, the management of the affairs of all the king's subjects is intrusted to the parliament of the empire; if, therefore, the people shall at any time attempt, or assume to set up, any representative body, for the management of their affairs, such attempt is a disclaimer of the lawful parliament of the land, and a usurpation of its authority. Gentlemen, I will beg leave to put it, not to you, but to every unprejudiced man, every Roman Catholic, who hears me, who will consider and reflect upon the subject, whether the convening such an assembly, in the metropolis of this country, can be reconcilable—not with the statute law of the land—but with the principles of any law whatsoever? Whether it is to be endured in any state, in which there is the form of a government, that an assembly so constituted should be tolerated or allowed? It is against the fundamental principles of all government, that the people should assume an authority to have themselves represented in an assembly distinct from that which is known to, and established by the law.

But it is contended that an assembly, so respectable as this, could not be guilty of any misconduct, or act in any way contrary to law. It is not, that an assembly of this magnitude has in it many respectable and loyal persons, that it is, therefore, to be countenanced or endured; or that the public peace can be guaranteed by the integrity of such persons; in such assemblies it is notorious that the moderate and well meaning are overborne by

the turbulent, the factious, and the desperate. Let me call your attention to that very committee out of whose resolutions the present intended assembly was to take its rise. We all recollect that committee, and its proceedings, during a great part of the last year, and the beginning of the present. I appeal not to you, but to every loyal and dispassionate Roman Catholic who hears me, whether that committee, though containing many most respectable and loyal men, did not proceed to such excesses, to such an abuse of the privilege under which they claimed to meet, of all decency and decorum, that every good and loyal Roman Catholic was scandalized and ashamed of them. Were there not found members of that committee also, to deliver speeches so gross, that the seditious press of Ireland became afraid to publish what they were not ashamed to speak. Every man who regarded the public peace cried out against them; and I am sure, that if blame be imputable to the government with respect to that committee, it must be, that it did not interpose sooner, and not for having interfered with it when it did. When it was expected, at least when every one hoped, that it was about to terminate its sittings, it issued a circular letter, calling for a renovation of itself, by the addition to its numbers of ten representatives from the counties, and five from every parish in Dublin. It was then, and not till then, that government interfered; it interposed, not by a measure violatory of the law, but by notifying to the magistrates, that the intended elections of persons to be incorporated with the committee, would be against the statute law of the land, and that recourse would be had to the law to prevent such a mischief. That interposition had the desired effect; treason and sedition were checked in their progress, and the project was for a time abandoned. The committee afterwards met; many of those respectable characters who had seceded during the period, or about the time when the committee had so much misconducted itself, returned to it. The admonition of the government, and the presence and prudence of these persons, restrained the commission of similar excesses, and therefore the same disposition to lenity on the part of the government, which had marked its conduct before the issuing of the circular letter of the committee, induced the government not to interfere; the project contained in that letter having been abandoned.

But I have digressed from my subject, in pursuing the history of that committee to its conclusion. I again return to it, by asking; is it in the conduct of that committee, that the government of the country are to look for a guarantee that all the acts and proceedings of the intended National Convention of the Roman Catholics of Ireland, will be marked by moderation and loyalty?

But it is contended, that as the avowed purpose of this convention is, to prepare and forward to parliament the petition of the Roman

Catholics, for the repeal of the laws which affect them: that on this ground government ought to connive at it. Petition being an ostensible object, it is necessary to call your attention to the nature of that petition, which it is alleged and pretended, is to be the sole business of this "National Convention." For this purpose, I think it may be useful, not only with respect to the subject of the present trial, but also in setting right the minds of such of my Roman Catholic countrymen as have been misled or abused, to state, very shortly, what is the actual political situation of the Roman Catholics of Ireland at this day, and thereby to ascertain precisely, what is the object of this petition, which is made the pretence for convening this National Assembly.

For this purpose, I shall go back to the year 1778, and state how the Roman Catholics of Ireland stood at that time, and then show, very briefly, in what situation they stand at present. In 1778, a period in the recollection of many of us, they were, with regard to landed property, disabled from acquiring any interest in lands beyond leases for 31 years, on which a rent amounting to two thirds of the value should be reserved; with regard to the estates of which they were in possession, they were disabled from disposing of them, except for value in money, and that to protestants; their estates were made to gavel among all the sons, for the purpose, and from the policy, of reducing the power of the Roman Catholics; the eldest son was enabled by his conformity to reduce his father to the situation of a mere tenant for life of his estates, with the reversion in fee to himself, subject to portions, debts, and engagements. Such was their situation, with respect to landed property.—With respect to personal privilege, they were incapable of holding any office, civil or military, in the state; of exercising the elective franchise; they were not admissible to the profession of the law; their clergy, regular and secular, were subject to various disabilities; no man of that religion was to keep a horse of above the value of 5*l*. if government thought fit to take it from him; and there were various other disabilities and penalties to which they were subject which it is not necessary to enumerate. In the year 1778, the legislature interfered, by allowing them to acquire a permanent interest in land, not exceeding, however, terms for 999 years, upon which a rent should be reserved. But the estates which they had previously acquired, were by that act made disposable exactly as the estates of Protestants were; and in that respect, they were put upon a perfect equality with them; the law which enabled the son to convert his father's estate to a tenancy for life, was repealed. So far the legislature interfered, in the year I have mentioned.

By the 21st and 22nd of the king, they were farther relieved, by being enabled to acquire estates in fee simple, and their incapacities with regard to landed property were completely removed; they were also relieved from

a variety of penalties and forfeitures, to which they had been subject by the penal code; still however, after that, and other intermediate acts, till 1793, they remained subject to the full operation of the test acts; they were not admissible to any offices civil or military, they were disabled from exercising the elective franchise, and excluded from the profession of the law. But in 1793, the statute passed, to which I wish to call your attention, because it appears necessary, in order to refute the assertions daily made by the press, and calculated and intended to mislead and impose upon the minds of the Roman Catholics of Ireland, that they are liable at this day to the penalties of the Popery laws. This act of Parliament will give to you, and to the Roman Catholics of Ireland, a clear and distinct view of their present situation; what they have acquired, I have stated, what remains for them to demand, and for parliament to grant, you will see presently. I will read the preamble from the statute, 33 Geo. 3. chap. 21. "Whereas various acts of parliament have been passed imposing on his majesty's subjects professing the Popish or Roman Catholic religion, many restraints and disabilities to which the other subjects of this realm are not liable; and from the peaceable and loyal demeanor of his majesty's Popish or Roman Catholic subjects, it is fit that such restraints and disabilities shall be discontinued—" It then enacts, that his majesty's subjects of the Roman Catholic religion, shall not be liable or subject to, any penalties, forfeitures, disabilities, or incapacities, or to any laws for the limitation, charging, or discovery of their estates and property, real and personal, or touching the acquiring of property, or securities affecting property, save such, as his majesty's subjects of the Protestant religion are liable and subject to.—This clause, at one stroke, has put an end to all penalties, disabilities, and incapacities, to which Roman Catholics were subject, and they are put upon a footing with their Protestant fellow-subjects, with this exception; that the statute still retains, in part, the provision of the test acts, by which both in England and in Ireland, certain oaths are to be taken, and ceremonies to be performed, by persons holding offices of trust. But this statute has excepted the Roman Catholics of Ireland from the operation even of the test acts, with respect to all offices whatever, save only and except the particular offices which are especially enumerated in the statute, and which I will read from the statute [the attorney-general then read the enumerated offices in the statute]. Except with reference to these enumerated offices, there is no legal or political distinction between his majesty's Protestant and Roman Catholic subjects of Ireland.

Let it not be imagined, that I am undervaluing the consequence of being admissible to these offices, to men of rank and property in the country. I acknowledge them to be laudable objects of ambition; and that it is the

right of every Roman Catholic subject, to petition to be relieved from the operation of the Test act; but I am endeavouring to impress upon your minds, how much the subject of the Roman Catholic petition is narrowed and confined; and how little it can be necessary, at this day, and for the first time, to call a National Convention of all the estates of the Catholics of Ireland; an assembly of five hundred persons, in order to prepare a petition to parliament for the purpose which I have distinctly submitted to your view; a petition which any man, who can read and write, is as capable of drawing and framing, as the ablest statesman in the land. But when I add to this, that the petition has been already prepared; that it has been again and again presented to parliament; that it has been again and again received and discussed; that it was never rejected, as defective in form, or in substance, I appeal to the good sense and candour of every Roman Catholic who hears me, if it be not a mockery to say, petition to parliament is the sole, or the real object of calling a "National Convention" of five hundred persons, to sit in the metropolis? I cannot reconcile it to my understanding, but I can well conceive why it should be desirable to some, that there should be such an assembly. If we can suppose, that there exists a rebel party in this country, a remnant of the United Irishmen, who are labouring to effect by artifice, that which they could not accomplish by force; who are labouring to undermine that constitution, which, in 1798, and in 1803, they attempted to carry by assault:—I can well conceive, that they may have an object in having such an assembly established within the metropolis. Is not the danger to the government, and the constitution of the country, obvious in the establishment of such an assembly? Under what control, I would ask, is such an assembly to sit, save its own discretion? Where are the rules and orders to be found which are to regulate its proceedings? Mark the wisdom of our constitution; our parliament—in which is to be found every thing which is dignified in the peerage, every thing that is valuable in the prelacy, every thing that rank and fortune and character can render respectable—cannot meet, but under the order of the king's writ; it cannot continue its sittings beyond the moment, when it is the pleasure of the crown that its session shall be closed. But this "National Convention," called by no will of the king, is to be subject to no control but its own discretion.

I am astonished, that the loyal and rational amongst the Roman Catholics of Ireland do not perceive that an imposition upon their understandings is attempted, when they are told, that the convocation of such an assembly, is immediately, or remotely, necessary to the carrying of their petition to parliament.

I have done, therefore, with that part of the subject; and I now beg leave to call your attention, and that of the Court, to the statute on

which this prosecution is founded, from which it will appear most clearly, that such an assembly is an unlawful assembly; and that the electing of delegates to such an assembly, is contrary to the statute laws of the land.

Antecedently to the enactment of the statute of the 33rd of Geo. 3rd, c. 29, upon which the present indictment has been framed, attempts had been made by certain visionary politicians in the northern parts of Ireland, to have delegated assemblies holden for the purpose of forwarding particular objects which they had in view; some of those persons, no doubt, had revolutionary designs, but certainly, there were many, who meant no mischief whatsoever. The ostensible object was, to forward the purposes, by an assembly, which by the weight and authority which it would acquire, from representing a great portion of the people, would attract public attention; and that the debates of such an assembly by the force of its eloquence, the strength of its arguments, and the firmness of its tone, would carry with it the public sentiment, and finally coerce the legislature into the adoption of those measures which those politicians thought fit to recommend for the country. The legislature saw directly the danger to the public peace, and to the constitution, which such delegated assemblies were likely to produce; and therefore, it was, that the statute was enacted. I will beg to call your attention to the preamble of the statute, which will explain best the extent and force of the enactment.

"Whereas the election or appointment of assemblies, purporting to represent the people, or any description or number of the people of this realm, under pretence of preparing or presenting petitions, complaints, remonstrances, and declarations, and other addresses to the king, or to both or either Houses of Parliament for alteration of matters established by law, or redress of alleged grievances in church and state, may be made use of, to serve the ends of factious and seditious persons, to the violation of the public peace, and the great and manifest encouragement of riot, tumult, and disorder—" The mischief recited is, that the appointment of such assemblies might be made use of, to serve the ends of faction, that is, that such assemblies, are, from their very nature, of a dangerous tendency; if so, what would common sense suggest as the proper remedy? Why, no doubt, that such assemblies should not be suffered to exist; and that is precisely what the statute has done and meant to do. For, whereas with regard to all other assemblies, their legality or illegality depends upon their proceedings; if their acts and proceedings be unlawful, the assembly will be unlawful, and they will be subject to the correction of the law; but with regard to those assemblies, the legislature makes their illegality depend upon their very constitution; and therefore it enacts, "that all such delegated or representative assemblies, for procuring an alteration of

"matters established by law, in church and state, are unlawful assemblies, and it shall be lawful for any peace officer to disperse them."

That this is the plain meaning of the statute, namely, that the constitution of the assembly, not its conduct, is the criterion of its illegality, appears from two provisions of the statute; one is, that without waiting for, or inquiring into any act done by such an assembly, the peace officers are required to disperse them. Could it be in the contemplation of the legislature, that the officers of justice should exercise a judgment on the proceedings of such an assembly, and according to those proceedings, to disperse them or not? To sit in judgment from day to day, in order to decide, whether the pretence or avowed object of these meetings were a true or a false one? Under such a construction, how could the statute prove a remedy against the dangerous tendency of such assemblies, when no remedy could be applied, until the mischief would be effected which the legislature meant to prevent?

The second provision of the statute which proves this to be its meaning, is the section of the act upon which the present indictment has been framed; by that (the second) section, it is made a high misdemeanor, for any person to give or publish notice of an election or appointment of a representative or delegate. The manifest object of this clause is, to prevent the existence of such an assembly, and to stifle the attempt to form it, in the very cradle.—It is obvious, upon this second section, that a prosecution may be maintained before the assembly has met.

But if any thing else were the object of the legislature, all prosecution must be suspended, until it were discovered, that the assembly was for no improper purpose; and no prosecution could be maintained, until after the assembly had been dispersed, when the object of prosecution for the election would be at an end.

From these provisions, as well as from the professed object of the act, which is, to prevent a mischief, rather than to punish it; it is clear that the illegality of such an assembly depends on its constitution, and not on its proceedings.

But I will examine the statute more particularly, and, I think, remove every shadow of doubt upon the subject. The only ground, upon which any cavil can be raised, is, upon the use of the word "pretence," which is introduced into this statute.—The assembly mentioned in the preamble, is an assembly, purporting to represent the people, under "pretence of preparing and presenting petitions."

Now, I understand, it will be contended on the part of the traverser, that, the word "pretence," contained in the statute, is used by the legislature as meaning "a false pretence;" and that therefore, a delegated assembly, or such a committee as I have been describing, if assembled for the purpose, really, of preparing

and presenting a petition to parliament and the king, is not within the provisions of the statute. That argument can be founded only upon the presumption, that when the legislature used the word "pretence," they intended "a false pretence." I will show, both from precedent and authority, as from the statute itself, that the word "pretence," used indefinitely does not import "a false pretence," but that its true, legal, and statutable meaning is *claim, assumption, or profession*; and then the statute will run thus, "that all delegated assemblies, *claiming, or assuming, or professing*, by petitioning or by any other means, to procure an alteration of matters established by law, are unlawful assemblies." When the legislature means to use the word "pretence," as a *false pretence*, it uses the epithet *false*—thus in the statute 26 of Geo. 3rd chap. 27, "if any person knowingly and designedly by *false pretence or pretences*, obtain money, goods," &c. then the epithet *false* is annexed to the word "pretence," it being the intention of the legislature to confine its meaning to the case of a "false pretence;" in the statute of 33 Henry 8th, chap. 9. Eng. against maintenance, it is enacted, that no person shall buy, or contract for any *pretended* right, or title—there using the word indefinitely, and yet the construction of that statute has been, that whether as lord Coke says, the title be nearly false, and nothing in verity—Or whether it be a real title; in either case, if the party contracting be out of possession, it shall be declared a pretended title. So that in the language of our statutes the word "pretence," indefinitely, does not import a *true* or *false* pretence; but a *claim, assumption or profession*, whether the same be false or well-founded. But there is a decisive authority upon this subject, arising on a statute quite similar to the present, and from which indeed the statute now in question seems to have been copied. It is the 13th of Charles 2nd, chap. 5. Eng. the title of it is very like the present; it is "An act against tumults and disorders, upon *pretence* of proposing petitions, and addresses, to his majesty and the parliament." It recites, that by sad experience, tumults, and other disorders in preparing petitions, and bringing up petitions by excessive numbers, endangered the public peace." That statute is order to prevent the recurrence of such mischiefs, prohibits the bringing up of petitions by any number, exceeding ten. It is the acknowledged law of England, that to bring up a petition by any greater number, subjects the parties offending to the penalty of 100*l.* in money, and three months imprisonment. Now I beg leave to call your lordships' attention to the words used by the legislature, to carry their object into execution—it is enacted, "That no person shall repair to his majesty, or both or either Houses of Parliament upon *pretence* of delivering any petition, with above the number of ten persons." Now, if the argument in the present case on the other side,

be well founded, it must amount to this, that notwithstanding that statute, any number of persons may go up with a petition to parliament or to the king, and that no prosecution can be maintained, unless such numbers have no petition; and meet to disturb the public peace, under the *false pretence* of petitioning. In that case the statute would be of no manner of use; it would prevent nothing; it would be suspended while the mischief had happened, when it would be punishable by the ordinary law of the land—as it stood before the statute was made. But the object was, to prevent that from which mischiefs were likely to ensue, and therefore if a greater number of persons than ten should accompany such a petition, they would be guilty of the offence, even though they were real petitioners.

Here is a statute, in which the legislature has used the word "pretence," and most clearly not "*false pretence*," but indefinitely, as profession, whether false or true, and construing the word "pretence" in the statute now in question, in the same sense, it makes the statute clear and consistent; it effects the object which the legislature had in view and removes every difficulty from the case.

So far, I have contended on authority and precedent for the true construction of the word "pretence" in the statute in question. I will now prove to your lordships' full satisfaction, from the statute itself, that it is, and was, used there in the same sense, and none other. The statute enacts, that, in two instances, delegated assemblies shall be unlawful:—1st, if they are *delegated assemblies under pretence* of petitioning, they are unlawful (the other side contend that must be "*false pretence*"); but then let me direct your attention to the second member of the same sentence, "or if they are delegated assemblies under pretence of, in any other manner, procuring an alteration of matters established by law in church or state," they are unlawful. I would ask, whether a delegated assembly, boldly avowing itself to be met for the purpose of an alteration of matters established by law, by its debates—by the weight of its delegated authority—by the effect which it may expect to have on the public mind, and so ultimately to induce the legislature to alter the laws, according to its prescription—would that be an assembly within the meaning of the act? It would not meet under any false pretence. No, the declared object would be the true one; and clearly it must be admitted, that such an assembly would be directly contrary to the law. If so, the legislature in one instance must have used the word *pretence*, not only in two distinct meanings, but in two meanings diametrically opposite to each other; as false "*pretence*," when applied to petitioning, and as true pretence, when applied to any other mode of effecting any alteration in the established laws. And therefore, my lords, the plain meaning of the statute is, that all representative assemblies for the purpose of procuring an alteration of matters established by

law in church or state, whether by petitioning, or in any other manner whatsoever, are made unlawful, and why?—because they are of dangerous tendency.

But further, the sense of the legislature is clear, from the next clause of the statute, which contains the saving out of the enactment. Nothing can serve to shew more satisfactorily the extent and comprehension of the enactment of a statute, than the saving or exception of it; for if the legislature had not conceived that the matter contained in the saving were within the extent of the enactment, there would be no use in the saving. Now see what the saving in this statute is, "save and except the knights, citizens, and burgesses, elected to serve in parliament, and save and except the houses of Convocation duly summoned by the king's writ." Now if the statute in its enactment, extended only to assemblies met under a "false pretence," it would be useless, nay absurd, to save and except these assemblies which meet under the real and true pretence of altering the laws, and if the legislature held it necessary to except those assemblies which meet for the true and real purpose of altering the laws, and did not except or save any others, must it not follow that the enactment of the statute extends to all other assemblies whatever, who meet to procure an alteration of the laws, whether on true or false pretences?

*Mr. Justice Day.*—The saving seems to have been unnecessary.

*Mr. Attorney General.*—But, my lord, it shews clearly, that the meaning of the legislature was to include in the enactment, every *delegated assembly*, which had for its object, whether *true or false*, to procure an alteration of matters established by law. It only remains, therefore, to call your attention to the 4th proviso, which I presume will be relied upon as doing away the prior enacting clauses.

If I have succeeded in satisfying your lordships' minds, that the enactment is clear, which makes a delegated assembly for the purpose of procuring an alteration of the law, unlawful because it is delegated, whether professing to procure that alteration by petition, or other means whatsoever; there will be no difficulty in disposing of the fourth proviso, which provides, "that nothing in the act contained, shall be construed in any manner to prevent or impede, the undoubted right of his majesty's subjects of this realm, to petition his majesty, or both houses, or either house of parliament, for redress of any public or private grievance." Before this statute, a claim was made, novel and unprecedented, never recognized as law, of petitioning by delegation. This statute cut it up by the roots, and having done so, then comes this cautionary provision, that the act shall not be construed to impede the undoubted right of petition; that is, that the act shall not be carried by construction beyond its enactment; this can never be considered as a saving and exception of delegated assemblies out of the

enactment. If that had been intended, why should they not be found in that part of the act which contains the express saving and exception? No; the legislature does not so soon repeat of the wise enactment it has made, as by a proviso at the end, to undo all that the preceding parts of the act had done; they only add a cautionary proviso, that the statute should not be carried, by construction, beyond the enactment; that it should not interfere, as it does not, with the ancient and unquestionable right of petitioning, to be exercised in the manner in which, from the earliest times, in England and Ireland it had been exercised.

But see, my lords, what would be the effect of this statute, if this clause should be construed as a saving for assemblies delegated for the purpose of petitioning. It never has been denied, that as well before as since the statute, the law and usage of parliament would not permit that a petition should be received from such an assembly, as being unknown to the law and the constitution. This seems to be conceded by the Roman Catholics themselves, who never have attempted to petition by their committees or delegates; but give the clause in question the effect of a saving for assemblies delegated for the purpose of petitioning, and the effect of this act must be, to introduce and to legalize a mode of petitioning, which, before the act, could not, according to the law of parliament, be used; for, if the act of parliament does particularly except "delegated associations for the purpose of petitioning" out of the prohibition of the statute, it must recognize them as lawful assemblies, recognized as such by the legislature, surely it must follow, that the legislature, after the passing of this act, could not refuse a petition from such an assembly: and if so, the title of this act is quite mistaken. It ought to be entitled "An act to extend the subjects' right of petitioning, by enabling them to petition (which before the act they were never authorized to do) by delegation," and therefore giving the act this construction, it must follow, that the Roman Catholic convention proposed to be assembled, should be empowered with the act in their hands, to carry up a petition to the king or the parliament, and to insist, that they have now, by virtue of the convention act in Ireland, a right which they never had before; of presenting a petition to the king or either House of Parliament. On the whole, it is impossible to form any other construction of this statute than that for which I have contended, namely, that delegated or representative associations for effecting an alteration of the established laws, whether by petitioning or otherwise, being of a tendency dangerous to the peace of any country, as well as to its government and constitution, shall not be allowed to exist in this. This is a construction consonant to common sense—conformable to the manifest intent of the legislature, and, as I have shown, to be deduced from every clause, and I may say from every word of the statute. I would add a



word, as to the effect of this intended Roman Catholic convention, and the proceedings leading to, and connected with it, on the Roman Catholic petition to parliament, which it was the professed object of such convention to promote.

I am sure, I offer no disparagement to the Roman Catholics of Ireland, when I say, that in point of rank, fortune, education, and character, the Roman Catholics of England are at least equal to those of Ireland. They are not only subject to all the incapacities to which the Roman Catholics of Ireland are subject, but also to several from which those of Ireland are exempted. They, no doubt, are as desirous as the Roman Catholics of Ireland to be delivered from the operation of the Test act, but they hold no aggregate meeting—they countenance no seditious speeches or proceedings—they issue no mandates for convening a provincial election—they claim not to hold "a National Convention." Now see whether the conduct which they observe, or that which the Roman Catholics of Ireland are pursuing, be most conducive to the success of their petition.

On the petition, parliament, and parliament alone, must decide. If any Roman Catholic of Ireland has cherished the idea of effecting the object of the petition by force, he is a traitor in point of design; the oath of his allegiance makes it high treason to attempt by force to alter any established law, and therefore it is by parliament and through parliament only, that the object of the Roman Catholic petition can ever be obtained. In that Parliament, the claims of the Roman Catholics have been advocated by many able and enlightened statesmen, and supported by a considerable and respectable number of its members.

Still, however, a majority in both Houses of Parliament, are not yet satisfied, that it is wise or politic, to depart from the policy of the Test acts; a policy which has prevailed since the reign of queen Elizabeth, existed at the Revolution, and has had the approbation of all successive parliaments, for so long a period of time. Now, I would appeal to the common sense of every Roman Catholic who hears me, whether he conceives, that this majority in parliament is to be convinced or persuaded to alter the opinion which they entertain, by the low and vulgar abuse which is poured upon them by those who affect to speak on behalf of the Roman Catholics of Ireland—by lawless and seditious meetings and assemblies—and lastly, by an attempt, in the name of the Roman Catholics of Ireland, to hold in defiance of the law of the land, a National Convention! And therefore if I consider this project of a National Roman Catholic Convention, with reference to the law, it appears to be most lawless:—if I consider it with reference to the constitution, it appears most unconstitutional: if with respect to its tendency, it is dangerous and revolutionary:—if as it relates to the Catholic petition, I cannot but consider it as

highly calculated to retard and to defeat it; and therefore, on the whole, I cannot but conclude with that position, on which I originally set out—that, this project is the plan and the design of some, whose object is, separation of the two countries—a revolution; and that those loyal and honest Roman Catholics, who have lent themselves to the furtherance of this project, are the dupes, and are made the instruments of designs of which they are not aware.

We shall prove the fact against the traverser, that he acted in the election of delegates or representatives to a "National Convention," to be assembled for the purpose of procuring an alteration of matters established by law; and, therefore, we have no doubt, that your verdict must find him guilty of the misdemeanor created by the statute.

#### EVIDENCE FOR THE PROSECUTION.

*John Sheppard*, sworn.—Examined by the *Solicitor General*.

In what situation, or employment are you?—I am a peace officer.

In the police establishment?—Yes, sir.

Were you directed to attend any meeting in Liffey-street chapel?—I was.

Did you attend it?—I did.

Do you recollect upon what day it was?—Wednesday, the 31st of July.

Do you know Dr. Sheridan?—I saw him there, and saw him in court this day.

*Mr. Solicitor General*.—Point him out, if you see him now.

[Witness did so.]

At about what hour did you go to the meeting?—Between twelve and one.

Was there an assembly in Liffey-street chapel upon that day?—There was, and what I considered a very large one.

Can you state about what number—be rather under?—I cannot state as to the number. The lower part of the chapel was full.

Did you see any person in the chair, presiding at that assembly?—I did; I saw Dr. Sheridan in the chair.

Did you hear any person address Dr. Sheridan in the chair?—I did.

Who was that person?—*Mr. Kirwan*, for one.

Do you recollect, what was the nature and substance of his first address to Dr. Sheridan?—The first motion was for a petition to the Prince Regent, and both Houses of Parliament, for a repeal of the penal laws existing against the Roman Catholics of Ireland, or to that purpose.

I do not ask you for the particular words; are you sure, that was the substance?—I am.

Was there a question put upon that motion?—There was.

Who put it?—*Dr. Sheridan*.

Was the motion carried?—It was, unanimously.

Do you recollect any other motion made by Mr. Kirwan at that meeting, to Dr. Sheridan?—There was a motion made for appointing a committee of five.

For what purpose?—For the purpose of representing that parish in the general committee of the Catholics; the words may not be exactly so.

You are not certain, as to the exact words; do you say, that is the substance?—That was the substance.

Mr. Burrows.—Gentlemen of the jury, I beg you will attend to that; he does not recollect the exact words, and yet they are very important.

Witness.—My lords, I omitted to state, that to "prepare a petition" was part of the motion, and to "conduct the business of the Catholic inhabitants of that parish."

Court.—Do you mean to say that was part of the motion?—Yes my lord.

Was it stated, at that meeting, according to your recollection, whether that motion was made in consequence of any previous meeting?—I heard of that elsewhere.

But did you hear it at that place?—I did not.

Then do not say any thing of it; was the motion for appointing a committee of five persons put?—It was.

Who put it?—Dr. Sheridan.

Was it carried?—It was.

Was any proceeding adopted in consequence of that resolution?—There was.

What was it?—There was some difference of opinion as to the mode of election. It was at last proposed, that seven persons, not candidates for the committee, should be chosen, and that those seven should retire, and select five out of a list which was given to them.

Did you see any of the seven persons who were so appointed?—I saw part of them.

Did you see any persons retire after that?—I did see some persons retire.

Was that proposal of appointing seven persons carried?—It was.

And after it was carried, some persons retired?—Yes.

Did those persons, who retired as you say, return to the meeting?—I saw but two of them afterwards; the situation I was in, was such, that I could not see all the people; I was in the gallery.

What was done afterwards?—One of the two handed in a list, I believe.

Mr. Gould.—Your belief is not evidence.

Did any of the persons who returned, hand any thing to any other?—They did.

To whom?—To Dr. Sheridan.

What was it?—A slip of paper.

What did Dr. Sheridan do, upon getting it?—I believe, he handed it to some other person.

Was it read?—It was.

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Were these any names read from it?—There were.

How many?—Five.

Do you recollect them?—I do.

Repeat them.—Dr. Sheridan was the first, Mr. Kirwan next, Mr. Taaffe next, Mr. Sweetman, and a Mr. Sheil.

Pray, sir, after those names were read, did Dr. Sheridan continue in the chair?—No, sir; he was removed from the chair.

Who took it?—Dr. Burke.

What was then done?—He put the question upon Dr. Sheridan's election, as one of the committee; it was carried unanimously.

After that, did Dr. Burke continue in the chair?—No, sir, it was taken by Dr. Sheridan.

Was there any vote upon the election of the other persons?—There was.

Were they elected?—They were all elected unanimously, with one exception.

After this election, did you hear any person address the chair?—I did.

Who were they?—The members of the committee.

Do you mean, that those persons, one at a time addressed the chair?—Yes, sir.

What was the subject of their address?—Expressing their thanks for the honour which was done them.

Can you name those who returned thanks?—I can. Mr. Kirwan, Mr. Taaffe. Mr. Sweetman was not present, and a friend of his thanked them in his name. Mr. Sheil, I understood, was in London, and that was the reason of the opposition to his appointment.

As soon as thanks were returned, was there any other motion made to Dr. Sheridan; did he continue in the chair?—It was moved that he should leave the chair, and Mr. Taaffe took it.

Was any motion made to him?—There was a motion returning the thanks of the assembly to Dr. Sheridan, for his proper conduct in the chair.

Was that motion carried?—It was.

Was any thing said by Dr. Sheridan?—He returned thanks, as the other members did, and promised his warmest support.

In what parish is Liffey-street chapel?—In St. Mary's parish, I believe.

Was there any other business done at that meeting, except what you have stated?—Nothing else, that I observed. Dr. Sheridan was in the chair when I got there.

Was any other motion attempted there?—Not that I heard.

Were you at a meeting at Fishamble-street on the 9th of July?—I cannot say positively. I was at several.

John Sheppard cross-examined by Mr. Burrows.

Of what religion are you?—Of the established church.

Then you did not go to the chapel in Liffey-street, as one of the meeting?—No, sir.

The meeting was open to any person, of any religion?—It was.

No concealment whatever?—None.

No abuse of any individual, or of the government?—Not a word.

Or any thing seditious?—No. From the respectability of the meeting, I would not expect any such thing.

Do you not believe, that they really did intend, to prepare a petition to parliament?—I do.

Do you not believe, that the resolutions which were passed at that meeting, were taken down in writing?—I believe they were read from a paper.

Read these two resolutions in this brief. You say, you do not recollect the words;—read; and say whether these were the words.

[*Mr. Barrowes* handed his brief to the witness.]

"Resolved, that we petition the prince regent, and both Houses of Parliament, against the laws which are still in force against our body," &c.

Was that the first resolution?—I believe so.

Read the second resolution.—"Resolved, That a committee of five persons be appointed to prepare a petition, to be presented," &c.

Was that the second resolution?—I think not.

Are you certain what were the words of the second resolution?—I mentioned the terms, as nearly as I can recollect; this copy is not so full.

Are you certain there were other words?—There were other words.

Can you swear to the word "represent" being in the resolution?—I can.

You are positive that the word "represent" was in the second resolution?—The words, "to present," or "prepare," were in it. I did not mean to say, "represent."

Then you do not mean to say, positively, that the word "represent," was in the second resolution?—I do not.

Whatever the resolutions were, they were read from a written paper?—I believe so.

And do you not believe, that such a paper would give a more correct statement than your recollection?—I do think so.

Did you say, there was a word about transacting business?—I did.

Upon your oath, did you not say (you may now unsay it, if you choose) that the object of the meeting was, to prepare a petition, and nothing else?—That was the object of the meeting.

And the only object of the meeting?—I cannot say.

Upon your oath, if any thing was said about the appointment of persons, do you not believe, that it was an appointment of persons to prepare the petition?—I believe the object of the meeting was to petition.

If any thing was said about doing business, by the persons there, was it not the business of preparing a petition; or what else was it?—I shall tell you; they appointed five persons, first to prepare a petition, and then to transact the business of the inhabitants of the parish.

What was the other business?—I cannot tell.

I appeal to your recollection, sir; was there any other business mentioned?—Nothing else that I heard.

Nothing, but about petitioning?—Nothing.

Had they any other business, as you believe, but to prepare a petition?—As I believe?

Yes; stating the foundation of your belief, can you mention any other business which was talked of?—I have already stated that there were five persons appointed.

That is not an answer. I ask again, did you hear any thing stated, but upon the subject of petitioning?—Except the appointment of five to be the Catholic committee of that parish to prepare a petition, and transact the other business of the inhabitants of that parish.

Did the resolutions state where the petition was to be prepared, or any thing done?—I do not recollect decidedly.

If you do not, do not invent. But you swear, positively, upon the peril of being credited by the jury, that they were to transact other business?—I do.

We will contradict you. What parish was this in?—St. Mary's I believe. I understand that Liffey-street chapel includes three parishes.

What three?—I do not know; but I understand they are St. Thomas, St. George and St. Mary.

Then it was the inhabitants of those three parishes who composed the meeting?—I suppose so.

Did you take any memorandum in writing of these resolutions, after you went home?—I did before I went home.

Where is it?—I have it not now.

When did you last see it?—I saw it within ten days, or a week.

Did you know ten days ago, that you were to come forward as a witness?—I did.

To prove the import of the resolutions?—Yes.

Did any person tell you not to bring the memorandum here?—No.

Why did you not bring it?—I did not choose to bring it.

Then you left it behind you, and you prefer giving a vague recollection of the substance.

To whom did you give it?—Not to any body. I believe it is in my desk.

Did you not think it important to have it?—If I could have found it I would have brought it.

Did you look in your desk for it?—I did, and it may be in it, though I could not find it: they were short notes, and the desk is in the office, crowded with papers.

Were you not sent to that meeting for the very purpose of taking an account of what passed?—I was sent to that meeting, as I was to others.

Did you tell those persons who sent you, what the import of the resolutions was?—I told those whom I had a right to tell it to.

Who were they?—The magistrates.

Did you give them a copy of the notes?—I

believe I gave them a written report, as is usual with me.

Is that lost?—I cannot say.

Was it in your hand-writing?—It was.

Did the magistrates destroy it?—I cannot say.

To whom did you give it?—I cannot tell to which of the magistrates I gave it—there were three sitting; and to which I gave it I cannot tell.

Who were the magistrates?—Alderman Pemberton, counsellor Hare, and major Sirr.

Can you not say to which of them you gave it?—I cannot. I do not say positively that I gave it, but it was usual to give reports.

You will not say positively whether you did or not?—I think it likely, if I was called upon.

To which of the magistrates?—I have not a perfect recollection, but I think Mr. Hare was there.

Who desired you to go to the meeting?—I got general orders to attend meetings.

These orders did not come from heaven; can you name any person on earth from whom you got them?—I sometimes got orders from the magistrates, and sometimes from the chief constable.

Who is he?—Mr. Farrell.

You said, that seven persons retired, and that two of them came back, who were they?—I think Mr. Scurlow was one of them.

Who was the other?—I cannot tell.

Was it Dr. Breene?—It was not.

Did you swear informations against Dr. Breene?—I swore informations—

But it is too hard to appeal to your memory; did you swear against him?—I swore informations, and stated his name, having heard his name mentioned.

Did you swear positively against him?—I did not.

What did you swear?—All I swore was, that I heard his name mentioned there.

Before whom did you swear your information?—Before the lord chief justice.

Did you not say, that you saw Dr. Breene there?—No; I only swore that I heard his name mentioned.

Did any other person swear against him?—There was another person at the meeting with me.

Did he swear informations against Dr. Breene?—I cannot tell.

Do you not know, that he was arrested upon your informations?—I cannot tell: he was arrested, but upon what informations I cannot say.

Were you not a constable of St. Paul's watch at some time?—No.

What was the whole of the time which you passed at the meeting? how many hours?—I do not think it was an hour altogether.

Was it half an hour?—I think it was.

Did you swear to a longer time?—No, I think not.

*James M'Donough*, sworn.—Examined by  
Mr. Sergeant Moore.

Are you in any public employment in this city?—Yes, I am.

In what situation?—I am a clerk in the head office of the police establishment.

Were you at any time, during the month of July last, in Liffey-street chapel?—Yes, sir.

Upon what day?—Upon the 31st of July.

What time of the day was it?—Between the hours of twelve and one.

Was any person with you?—Yes.

Who was with you?—Sheppard.

Do you mean the last witness?—Yes.

Did you go together?—Yes.

Did you find any persons assembled at Liffey-street chapel on that day?—Yes, a considerable number.

Did you remain among them, or join them?—No, I went up to the gallery.

Did you observe what they proceeded to do?—Yes.

State what they did?—I saw Mr. Thomas Kirwan there.

Is he in court?—Yes, there he is [pointing to Mr. Kirwan.]

Do you see any other person here, who was at the meeting?—Yes, Dr. Sheridan.

Point him out?

[Witness did so.]

Was there any chairman?—No, Dr. Sheridan was in the chair.

Did you see him take the chair?—No, he was in the chair when we arrived.

Did you hear any person address the chair, or the meeting?—Yes, I did.

Who?—Mr. Kirwan.

Did he speak to the meeting?—He did.

Do you recollect the general subject of his discourse?—Yes; he moved that a petition be presented to his royal highness the prince regent, and both houses of parliament, praying a repeal of the penal laws still existing against the Roman Catholics of Ireland.

What was the fate of that resolution?—It was seconded, and carried unanimously.

Was the motion put by any person?—It was by Dr. Sheridan.

Was any thing else proposed?—Yes.

What was next done?—Mr. Kirwan then moved, that five persons should be appointed to prepare, or present the said petition, I cannot say which, and that the said five persons were to represent the Catholics of that parish in the general committee of the Catholics.

Was that resolution seconded?—It was.

Was it put by the chairman?—It was:

By Dr. Sheridan?—Yes.

Was it passed unanimously?—It was.

What was the next proceeding which you observed?—Mr. Kirwan then moved, that seven persons be named to appoint the said committee of five, but that none of the seven were to be eligible to be of the committee of five, or words to that effect.

Was that resolution seconded or put?—It was.

And passed?—Yes, it passed.

What did they proceed to do next?—The seven persons were nominated.

In what manner?—It first began by Dr. Sheridan naming one, and the person he named mentioned a second, and so it went on till the seven were named.

What did those seven persons do after they were appointed?—They retired for a short time.

Out of the chapel?—I cannot say: they went aside.

How long were they apart?—I cannot exactly say; from five to seven minutes.

When they returned, what was the next proceeding?—When they returned, some person in the assembly, I cannot say who it was, stated the names of the five persons they had appointed.

Do you recollect any of the names of the persons who were appointed to this high national dignity?—I can.

Mention them?—Dr. Sheridan was one.

Who was the first?—He was the first named.

Do you recollect any other?—Thomas Kirwan, Henry Edward Taaffe, Wm. Sweetman, jun. and Mr. Sheil, I think.

Are you positive, as to Dr. Sheridan and Mr. Kirwan?—I am.

When they were elected, did they take any notice of it?—Yes, sir; when Dr. Sheridan's name was mentioned, it was moved, that he should leave the chair, and that Dr. Burke should take it, which was accordingly done.

What was done then?—When Dr. Burke took the chair, Dr. Sheridan's name was put to the meeting, as one of the five persons, and it was carried unanimously.

Did he say any thing upon that?—I do not recollect that Dr. Sheridan did; but when Mr. Kirwan was elected, he returned thanks to the meeting for appointing him, and said, that he would render them every service in his power.

Did Dr. Sheridan return to the chair?—He did; after the vote passed, electing him one of the committee of five, he resumed the chair.

Did you see him leave the chair again after that?—He did.

What was the object of it?—It was moved in the meeting, that he should leave the chair, and that Mr. Taaffe should take it, which was done.

What was the proceeding then?—After Mr. Taaffe took the chair, the thanks of the meeting were returned by Mr. Taaffe to Dr. Sheridan, for his proper conduct in the chair.

*James M'Donough* cross-examined by  
Mr. Burne.

Did you and Sheppard go together to the meeting of the 9th of July?—We did.

Did you come away together?—We did.

Then you were there as long as Mr. Sheppard was?—I was.

By whose direction did you go there?—In consequence of orders from the head office of the police.

By what magistrates?—Either Mr. Hare, or major Sirr.

You cannot form a belief which of them gave the orders?—I cannot; it was in consequence of orders from them, or one of them.

What is your situation in the police office?—A clerk.

What is Sheppard?—A constable.

Is your situation or his of the higher order?—I believe mine is.

Did you get any particular orders from the gentleman who sent you?—Yes, sir; to take down notes of what passed.

Was it your business or Sheppard's to take the notes?—I should suppose it was the business of both.

Did you take any notes of what passed?—I did.

Give me leave to ask you what has become of them?—I do not know. I may have them, or may not.

When did you last see them?—About ten days ago.

Were you in court during the whole of Sheppard's examination?—I was.

Upon your oath, where are your notes?—I cannot say.

I ask you, were not your orders, to give a report to the magistrates of what passed at the meeting?—Yes.

Did you not give a report in writing?—No, I did not.

What! you, the scribe, gave no report?—I gave no written report.

Were you asked for any?—I was asked what passed.

Were you asked for any report in writing?—Not at that time.

Were you at any other time?—I believe I was.

By which of the magistrates?—By Mr. Hare. Where was your report at that time?—In the office.

You gave it in?—It was in my desk in the office.

Did you never take it out?—I did.

For what purpose?—To look at it.

For what purpose?—I cannot immediately recollect.

Who desired you to take it out?—Nobody.

How long is it since you took it out of your desk?—I do not know at what time.

Was it two months ago?—I cannot say.

Was it one month ago?—I cannot say.

You saw it ten days ago?—I believe so.

Did you return it into your desk?—I cannot tell.

What did you take it out for?—To look at it.

Did you know at that time, that you were to be examined as a witness here?—I know previous to that.

Was it to con over, and refresh your memory?—It might be.

But was it for that purpose?—It was.

Did you ever look for it since?—Not since I saw it last.

You did not search since ten days?—No.

When was it that Mr. Hare asked you for the report?—I believe it was in a short time after I had been in the chapel.

You had it in the office?—Not in the same office.

But in the same house, and you did not comply with his request?—He asked me, had I it, and I told him I had it.

Did you ever shew it to him?—I cannot say, that I shewed him that document, or a copy of it; he saw a copy of the informations which were sworn.

Did you ever make a copy of your notes, or any abstract from them?—None, but the informations, which were sworn.

You were informed ten days ago, that you were to be examined?—I was.

Was it upon that occasion, that you looked at the memorandum?—No.

Upon what occasion did you look at it?—I was looking after other papers, and seeing that memorandum, I read it.

Do you believe it is in your desk, or elsewhere?—It certainly must be in the desk, or elsewhere.

You have said, that when you last saw the paper, it was by accident?—It was.

Then you did not go to look for it?—Not at that time.

Did you at any time?—Yes.

At what time?—When the informations were going to be sworn.

That was not the time when you saw the notes ten days ago?—No.

Then you looked at them again?—Yes.

How long ago?—Ten days ago.

You said, that you were looking for other papers, and found the notes accidentally among them?—So I did, and when I saw them, I read them.

You mentioned, that two resolutions were passed at the meeting; the first was, that a petition should be presented; state what were the words of the second, as exactly, as you recollect?—The second resolution was, that five persons be appointed to prepare, or present, the petition, and that the said five persons were to represent the Catholics of that parish in the general committee of the Catholics.

Was that the whole of the second resolution, as you recollect?—I think so.

Now, you have said, that they were to represent the Catholics of that parish, in the general committee of the Catholics; are you positive as to the word "represent"? Take down what he says?—It was, that the five persons so appointed—

Sir, that is not an answer. Can you say, positively, that the word "represent" was in the second resolution?—Either that, or something very like it.

Will you swear, positively?—I cannot immediately swear to the exact expression; but that was the substance.

Do you not believe, that the resolutions were in writing? were they not read from a writing?—They were read; but whether they were in writing, or print, I cannot say.

But they were upon paper?—They were.

And read from a paper?—They were.

Did you swear any informations against Dr. Breene?—Yes, I did; I mentioned his name as one of the seven persons, who, I believe was there: I mentioned Mr. Breene, whom I afterwards heard was Dr. Breene.

Did you take your notes at the same time that Sheppard did?—Part of them.

At what time did you take any other?—Immediately after I left the chapel.

Whose proper duty was it to make a report of the proceedings, the constable or the clerk?—Both.

Have you made any written report?—No, I mentioned the matter to the magistrates.

I speak of a written report?—I did not make any.

Whose duty was it, and upon whom did the magistrates call for a report?—They did not call upon either of us.

Mr. Justice Day. Did you see Dr. Breene in the chapel?—No, my lord.

I thought you said you saw him in the chapel?—I saw a person, who I was told was Dr. Breene.

Did you know him?—I had seen Dr. Breene before.

Did you see him that day in the chapel?—Not in the chapel.

*Francis Huddleston, esq. sworn.—Examined by Mr. Sergeant Ball.*

Pray, Mr. Huddleston, did you attend any aggregate meeting of the Catholics during last summer?—I did attend the aggregate meeting of the Catholics held in Fishamble-street on the 9th of July.

Was there a full meeting?—A very full meeting.

Was the chair taken by any person? You need not mention names?—It was.

Mr. O'Connell. Let him mention who presided.

Mr. Sergeant Ball. Since the gentleman desires it. Who took the chair?—The earl of Fingall.

What was the first business done after the chair was taken?

Mr. Gould. My lords, a very serious objection arises to this evidence. If I understand my friend, Mr. Sergeant Ball, right, he is now going to prove what passed at Fishamble-street, on the 9th of July. I object, at this stage of the case, to evidence being given of what passed at that meeting, at which the traverser was not present. This is an indictment against the traverser, containing a specific charge of having acted illegally on the 31st of July, at Liffey-street, and there is no evidence to connect him with the aggregate meeting held

on the 9th.—There is no evidence to shew, that what passed at the meeting, at which the traverser presided, was at all connected with the business of the aggregate meeting, at which lord Fingall presided. If there be any thing appearing upon the testimony of the former witnesses connecting these transactions, I stand corrected. But, to my recollection, no such evidence was given; and I believe no such evidence appears upon your lordships' notes; indeed I am the more warranted in making this objection, from certain questions which were put to one of the former witnesses, by the solicitor-general. Therefore, the Court will now determine, whether upon a charge against Dr. Sheridan, for having acted in a certain manner at Liffey-street, on the 31st of July, it is competent, for the counsel for the Crown to give evidence of what passed at another meeting, held twenty-two days before, and in another place.

Lord Chief Justice *Downes*.—As yet, I do not see any connexion between the proceedings.

Mr. Sergeant *Ball*.—When an improper question is put, an objection may be made, and if I do not connect the matter with the traverser, the evidence will go for nothing.

Mr. *Goold*.—I make the objection, because I do not know what effect such evidence may have, even although it be subsequently rejected.

Mr. Justice *Daly*.—If the evidence be not relevant, it should not be received.

Mr. Sergeant *Ball*.—The object of the examination is, to shew, that the meeting of the 31st of July, at Liffey-street, was held in consequence of the resolutions entered into on the 9th of July, at Fishamble-street, and for the purpose of carrying them into effect. It is necessary, therefore, to produce a witness, to shew, that, a general meeting of the Catholics had been resolved upon, which we say was done on the 9th of July, and that the meeting of the 31st of July was for the purpose of carrying into effect the resolutions of the former meeting, by electing delegates to represent the Catholics of the several parishes in Dublin, in the meeting previously resolved upon.

Mr. Solicitor General.—My lords, there are two counts in the present indictment: the first complains of the traverser, for having taken part in the election of five persons, to represent the parish in the aggregate committee, in consequence of the resolutions entered into on the 9th of July. The second count is, for taking part in the election of delegates to represent the parish in the general committee, without referring to the resolutions of the 9th of July. In the support of these charges, it is competent for us, to prove, that a general committee had been resolved upon. In support of the first count, we propose to shew, that such a resolution was agreed to upon the 9th

of July; and in support of the second count, to shew that it was resolved upon, at any time, that a general committee, should be held; because, that is the import of the second count. We do not pretend to say, that Dr. Sheridan was present at the meeting of the 9th of July; but we submit, that it is competent for us to prove the fact, that a general meeting was resolved upon; and then to shew, that the election, which was afterwards held, was for the purpose of representing this parish, in that general committee: We conceive, that the charge against the traverser will be supported by the evidence proving, that a general committee was resolved upon, when lord Fingall was in the chair, to which five representatives should be sent from each parish; and then, that five persons were elected in this particular parish, to attend that general committee. This will be one circumstance, among others, for the jury, in ascertaining what is really the *corpus delicti*.

Mr. *Burrowes*.—My lords, the counsel for the crown are not founded in offering this evidence, either upon its relevancy to the charge, or its applicability to Dr. Sheridan. There is evidence of an election to represent the parish in some general meeting. But the counsel for the crown are not at liberty to go into any portion of mankind, to show that an illegal assembly was at any time held without connecting that assembly with the traverser.—Really, if that evidence be admissible, they might travel back to the Dunganon meeting, or the Athlone meeting, and the jury might as well credit the statement of the attorney-general, or the indictment itself, without requiring evidence. If it be shown that the two assemblies were connected, and that the latter, at which the traverser was present, flowed from the former, the evidence is then admissible. But what is now offered does not extend so far. They should give evidence that an illegal assembly was held on the 9th of July; that the traverser attended, and assented to the appointment of delegates.

Mr. Justice *Daly*.—As I understand, it is proposed to show that it was resolved to elect five delegates for each parish, and it appears that five delegates were elected for the parish of St. Mary. Is not that evidence for the jury?

Mr. *Burrowes*.—My lords; I think it might as well be said, that if a man was robbed of five guineas, and that five guineas were found in the pocket of another man twenty years before, he should be found guilty.

Mr. Attorney General.—These are observations upon the weight of evidence.

Lord Chief Justice *Downes*.—It is not very important at what period of the trial the connection is established. The jury must believe, that the assemblies are connected; and if the evidence shall not satisfy them, they ought to acquit the traverser.

Mr. Sergeant *Ball*.—Were any resolutions

entered into at that meeting, relative to the appointment of a general committee of Catholics?—There were.

For what purpose?—I will relate the transactions of the meeting. After the chair was taken, Mr. Hay, the secretary, began by reading the proceedings of the last meeting of the Catholic committee, which had been held a few days before. Shall I mention names or not?

Mr. *Goold*.—Mention every name.

Mr. Sergeant *Ball*.—What next passed?—There was a resolution to this effect.

Mr. *Goold*.—The resolutions were in writing and read?—They were.

Mr. *Goold*.—My lords, we object to this parol evidence; if the resolutions are to affect us, the paper-writing containing them should be given in evidence.

Mr. *Johnson*.—My lords, they might produce Mr. Hay as a witness, he being in existence; and it is the more necessary to resort to the written evidence, after such testimony was given as we heard from the two last witnesses.

Mr. *Burrows*.—There is no distinction in the rules of evidence between criminal and civil cases; and in both it is always held that the contents of a written paper cannot be proved by parol, without showing that the paper is lost. It is a cardinal rule of evidence, that the best evidence which the nature of the case admits of, shall be given. If a man be indicted for composing a treasonable paper, will evidence of its contents be received, except from the paper itself? Is a recollection of the contents equivalent, in value, to the paper itself? There is nothing about which the law is more sacred than keeping away the vague and fluctuating recollection of the contents of written instruments, when it is possible to produce the instruments themselves. Here, no evidence is given to show that any attempt was made to produce this paper; that it is lost; or any thing to show that the rule, which is uniform and general, should be dispensed with. Why should the rule be dispensed with in this case? Is it in the hope that memory will supply defects in the evidence? that the witness may state, as from his recollection, what would not appear, if the paper was produced?

Mr. *Goold*.—My lords, I beg to mention the case of Hardy, who was tried in England, for high treason, and certain papers, alleged to be treasonable, were given in evidence, as the proceedings of the Corresponding Society. These papers were read in evidence; the contents of them were not told from the recollection of witnesses. The attorney-general began by detailing the documents themselves, and he did not depend upon the recollection of any man.

Mr. Justice *Osborne*.—Who had the paper in his possession?

Witness.—My lord, Mr. Hay read it.

Was that the first time you heard of it?—My lord, I had heard of it before.

Mr. Justice *Day*.—There does not appear to be any attempt to obtain the primary evidence.

Mr. Sergeant *Ball*.—My lords, this is not an indictment for composing those resolutions, or publishing them: we do not even know whether Dr. Sheridan was at that meeting or not. But we offer evidence of what was done at that meeting, to show that it was connected with the other.

Mr. Justice *Daly*.—The witness says he heard the secretary read the paper;—has any attempt been made to get it?

Mr. Sergeant *Ball*.—My lord, what the secretary read, was the proceeding of a prior meeting. We do not want the witness to detail what the secretary read respecting that prior meeting, and we will proceed to show what was done at the meeting of the 9th.—You said the secretary read some paper; do not state what it was: but I ask you, was there any motion made with regard to an original resolution entered into by the meeting of the 9th of July?

Mr. *Goold*.—My lords, I object to this: I have read the indictment, and the counsel for the crown must prove the statement which is there made: it states the resolution of the aggregate meeting of the 9th of July, and that the traverser, being a person professing the Roman Catholic religion, and well knowing the premises, and contriving and intending to aid and assist in and towards the forming of such committee, did meet on the 31st of July, &c. All this must be proved by legal evidence. Now I will get from the witness an acknowledgment, that whatever motion was made, or resolution entered into, was in writing. Was not the motion, or resolution, which you are going to state, in writing?—They were read from the chair.

Mr. Sergeant *Ball*.—Was there any resolution entered into at that meeting, relative to a committee;—answer, yes, or no?—There were several.

What was the substance of the first proposition made?

Mr. *Goold*.—My lord, it appears that those resolutions were in writing, and read from the chair; and the court has ruled, that the substance of the contents cannot be given in evidence without the paper being produced.

Mr. Sergeant *Ball*.—I do not apprehend that the Court has ruled any such thing. We were giving evidence of what was read by the secretary—it was objected to, and whether the objection was right or wrong, we did not persevere.

Lord Chief Justice.—We considered that you gave it up.



Mr. Justice *Daly*.—We made no rule upon it.

Mr. Sergeant *Ball*.—I now offer evidence of what was further done at the meeting.

Mr. *Barrowes*.—Were the proceedings taken down in writing?—I cannot say that all the proceedings were taken down. The person making the proposition, handed it in paper to the chairman, but whether it was afterwards taken down in a book, or upon any other paper, I cannot say.

Mr. *Goold*.—Did lord Fingall sign the resolutions? You have no difficulty in answering that?—I have a difficulty; but I rather believe they were.

Mr. Sergeant *Ball*.—Really the objection resolves itself into this: A meeting is held; a person there reads a resolution from a paper, which he handed to the chairman, and because the counsel for the crown cannot produce that identical piece of paper, which if produced, most probably could not be sworn to; therefore no evidence can be given of what passed at the meeting.

Mr. *Goold*.—That is a *petitio principii*. Has any notice to produce the paper been served?

Lord Chief Justice *Dowdes*.—Is this evidence of that kind or nature, to which the distinction between primary and secondary evidence applies?

Mr. *Goold*.—My lord, we contend it is. The principles of law and reason require, that the contents of a paper shall be proved by the paper itself; the law will not convict any man upon the fancy or recollection of a witness. Why do they not show, that they made any application to lord Fingall, or Mr. Hay?

Mr. Justice *O'Byrne*.—Let us ascertain from the witness, exactly what the facts are. Was the paper handed to lord Fingall, as the chairman, to put a question upon it?—The paper was read by the person proposing the resolution: it was seconded; then the paper was handed to the chairman, and read by him. I can state what it was; but what became of it afterwards, I cannot say.

Mr. *Solicitor General*.—I hope if your lordships have any doubt upon this objection, that you will hear the counsel for the crown.

Mr. Justice *Daly*.—The question is, whether a party ought to be affected by parol evidence of the contents of a written paper, which is not produced, or accounted for. The variance of a single word might be important.

Mr. *Solicitor General*.—My lord, the question arising upon the objection, is, whether the substance of what passed at a meeting, can be proved by parol, it appearing that the resolutions were read from a written paper, and that the witness believes they were signed by lord Fingall. I take it to be perfectly clear,

that such parol evidence is admissible. What the individuals said, or the meeting determined can be so proved. Suppose it were a court of justice, or an house of parliament, or any assembly, in which the acts of persons present would be legal evidence; how are their acts, or declarations proved, but by parol evidence? The objection would amount to this, that if a man chose to read his speech, no evidence could be given of what he said, except from his own paper. Some men study their speeches and repeat them from memory; others write them at length and read them; others again refer to short notes; and shall it be argued, that because such writings did exist, no evidence can be given of what the speakers said, but that their notes and memorandums must be produced?

Mr. Justice *Daly*.—The evidence offered is, not of the motions or speeches made by individual members of the assembly; but of the resolutions of the meetings which are intended to be made the ground work of the whole indictment.

Mr. *Solicitor General*.—My lord, I apprehend, that some confusion prevails upon the subject. It is admitted, that acts of the assembly are evidence. Are those acts less evidence, because some of the members reduce part of the proceedings to writing? Suppose a man uttered a treasonable speech, and that he read it from notes, instead of speaking it *extempore*, would it be required by a court of justice, that the prosecutor should call upon him to produce his notes, or his written composition? Is there any thing in the nature of such a written paper, which renders its production necessary? Under both counts of this indictment, we say that the proceedings in Liffey-street chapel are evidence; and parol evidence of them has been admitted. Under the first count, we say, that the proceedings at Fishamble-street are evidence; and is it because there was a clerk employed to take down minutes of their proceedings, that therefore it is necessary to produce that clerk and his memorandums? Suppose Mr. Secretary Hay was produced, he might object, and say that those papers would criminate himself. This kind of writing is not like a letter, or a deed, or an article, under which a title is derived. Uttering a speech, or passing a resolution is one thing—reducing that speech or resolution to writing is another; and it is not because the latter has been done, that therefore no evidence can be given of the former, but such writing subsequently made. A number of persons assemble and confer together—they agree to a certain resolution. If it be necessary, to prove such a transaction upon a criminal trial, would the prosecutor be bound to produce the resolution in writing? Or would he be bound by the manner in which it was taken down by one of the confederates? Suppose the written resolution was produced, that would not preclude us from giving evidence of other matters,

which took place; and further, suppose the matter was reduced to writing in such a way as to avoid a criminal imputation, although every sentence of the debate or conversation were criminal, would the prosecutor be bound by the former, and precluded from giving evidence of the latter? He cannot be bound by the notion, that one being superior, evidence cannot be supplied by inferior. That distinction does not apply to the present case, and yet the only ground upon which this argument is supported is, that you cannot give inferior evidence, because there is evidence of a superior nature in existence. Suppose the resolutions were now produced in paper, should we not be at liberty to give evidence to contradict them?

[Several of the Traverser's counsel answered—Certainly.]

*Mr. Solicitor General*.—My lords, I cannot proceed in the argument, if I am to be interrupted by a cry, from a Committee of Counsel. I say that the doctrine respecting written evidence being superior, and parol evidence being inferior, does not apply to this case. But that it is competent for us, to prove by parol evidence, the acts of persons combining together; and that the circumstance of those persons entering their resolutions in writing, does not render the parol evidence less admissible.

*Lord Chief Justice Downes*.—I do not feel, that this objection to the evidence has any weight.—The paper alluded to, is not that kind of instrument which should, in the first instance, be produced, or accounted for, before evidence of an inferior nature can be given. The objection is founded upon a presumption, that there is a document of an authentic nature, showing what the proceedings were, and that it is not competent to give evidence of those proceedings, without producing that document. The evidence offered is, to show the transactions of the meeting; what was said by the one and the other; in short, the general conduct of the assembly. This cannot be rejected because there was some person there who took notes of what passed. Possibly, that person may have a more accurate account; but it goes no further than that.—If he shall vary from the present witness, it will be a question of credit between them. But the distinction between primary and secondary evidence does not strike me to be applicable to this point.

*Mr. Justice Day*.—Possibly, I have mistaken the drift of the examination. But if the testimony of the witness went to establish, that certain resolutions were entered into, as evidence necessary to support the prosecution, I should suppose, that the resolutions ought to be produced.

*Mr. Justice Daly*.—I think the evidence offered is this:—evidence of the acts and declarations of individuals in that assembly. In order to prove that, the witness states, that a person rose, and made a motion, which he read

from a written paper, that does not create the question of primary or secondary evidence at all. The evidence offered is, not what the paper contained, but what one person proposed, and what the meeting adopted. Suppose, in an action for slanderous words, it was proved, that some person took down the words, that would not prevent another witness from giving parol evidence of what the words were. So here, I think it competent to prove the proceedings by parol evidence.

*Mr. Barrowes*.—My lord, I am not going to argue the question further; but with a view to conform to the rule, after the Court shall have decided, I beg to know, do the gentlemen for the crown mean, that parol evidence of a particular proposition in writing, moved and passed, shall be evidence to affect the whole assembly, and also the traverser, if he be connected with that assembly?

*Mr. Justice Daly*.—I understand the object to be this—to examine the witness to prove what was said at that meeting, without proving any thing that was taken down in writing.

*Lord Chief Justice Downes*.—To what extent it may bear, we are not now called upon to say.

*Mr. Driscoll*.—My lord, I apprehend, that there is a misconception, as to the question put to the witness. He was interrogated as to the substance of a resolution which was moved from a written paper, read by the chairman from the same paper, and afterwards again reduced to writing.

*Lord Chief Justice*.—The Court has ruled, that the question may be asked.

*Mr. Sergeant Ball*.—You have stated, that there was a proposition made. What was the substance of it?—Is it necessary to mention names?

No; we do not desire it; some gentlemen on the other side wish it, but do you state what the resolutions were?—A gentleman gave in a report of different proceedings, and concluded with a resolution, to remove the prejudices on the part of the English.

What was the first resolution?—It was declaratory of a naked right:

“Resolved, That being impressed with an unalterable conviction of its being the undoubted right of every man, to worship his Creator according to the genuine dictates of his own conscience, we deem it our duty, publicly and solemnly to declare our decided opinion, and principle, that no government can, with justice, inflict any pains, penalty, or privation upon any man, for professing that form of Christian faith, which he in his conscience believes.”

What was the second resolution?—“That we shall therefore persevere in petitioning the legislature for a total and unqualified repeal of the penal laws, which aggrieve and degrade the Catholics of Ireland.”

What was the third resolution?—"Resolved, That in exercising this undoubted right of petitioning, we shall continue to adhere to the ancient principles of the constitution, and to conform also to the peculiar restrictions, which, by modern statutes, are imposed on the people of Ireland."

What was the fourth resolution?—That a committee be appointed to "inquire into the state of the penal laws, affecting the Roman Catholics, and give a return of the same within one month."

Were those resolutions carried?—Yes, they were carried unanimously. Another gentleman then rose and stated, that the resolution which he had to propose, had, for the sake of convenience, been agreed upon in an adjoining room. He said, it was possible, that there might be a communication with government, and the persons appointed ought to be respectable; he then moved the fifth resolution: "That the said committee do consist of the Catholic peers, and their eldest sons; the Catholic baronets; the prelates of the Catholic church in Ireland; and also ten persons to be appointed by the Catholics in each county in Ireland; the survivors of the delegates of 1793 to constitute an integral part of that number; and also of five persons to be appointed by the Catholic inhabitants of each parish in Dublin."

Was that resolution put to the assembly?—It was, and carried unanimously.

Do you recollect any thing more that happened at that meeting?—There were other resolutions respecting money granted to individuals, and thanks voted to several members of parliament.

*Francis Huddleston, esq. cross-examined by Mr. Gould.*

Captain Huddleston, what countryman are you?—An Englishman.

Of what religion are you?—I was brought up a Catholic.

That is not an answer to my question?—I consider myself a protestant. I think it right to explain myself. I have for many years past considered upon the subject, and from a perfect conviction upon my own mind, I have rejected the doctrines of the Romish church, and embraced the tenets of the Protestant religion.

Have you taken any measures upon the subject? I presume, that you have renounced the Catholic religion, with all the solemnity such an alteration in your religious opinions required?—I have never, in a formal manner, conformed; but when I make a declaration of my being a Protestant in the face of this Court, I think I cannot make a more solemn recantation.

From the character in which you appear this day, you do the Protestant religion great honour and on hearing "truths divine;" from such a tongue, I presume, that I am to take every thing which you have said this day, as

gospel. You have the honour of being descended from a very ancient Roman Catholic family?—I have.

Your family have been Roman Catholics for many years?—They have.

Some hundreds of years?—Yes.

You have conferred great honour upon your family, and credit upon your country, by reading your recantation this day in the court of King's-bench?—I have acted from conviction.

You are a man of learning?—Not much; I have read a great deal.

And the result of your reading was, to become a Protestant?—Most decidedly.

And to declare it here this day?—I have been compelled to declare it.

It was the result of your reading which induced you to become a Protestant. You were actuated, no doubt, by a divine sense of religion?—I was.

Now, sir, let me ask you, have you ever entertained loose opinions upon the subject of religion?—Since I came to the use of reason, I never entertained any opinion derogatory to the Christian religion; but I cannot answer for myself before I arrived at fourteen or fifteen years of age.

Do you swear positively, that since you arrived at the age of fourteen or fifteen years, you entertained no doctrine or tenet, except such, as was completely conformable to the Christian religion?—I think I can.

Did you, before you attained the age of fourteen or fifteen, entertain tenets not conformable to that religion?—I cannot recollect.

You will not say that you did not?—I do not think I did; I might have neglected the duties of religion.

Then, as you are a perfectly pure, religious man, give me leave to ask you, have you lately made any declaration, denying the subject of religion?—I believe I never did.

Will you swear, positively, that you did not?—I will.

That you never declared you were a deist?—Never.

Or a tendency towards deism?—No such thing.

Then you would be shocked, if I were to ask you whether you ever declared yourself to be an atheist?—Certainly not.

Do you swear that positively?—Most solemnly.

Then in taking the account from captain Huddleston himself, he is a perfectly pure and moral man?—I do not say that.

Are you not perfectly religious?—I do not say I am perfectly religious.

Or perfectly moral?—I do not say I am a perfectly moral man. I have the frailties of others.

At the time of this extraordinary meeting you did not go there as a Catholic?—I did not.

What was your object in going there?—My sole object was, to report for the newspapers.

You attended, in the quality of a reporter for the newspapers?—Yes.

Of course, it is no shame?—It was more for my family's sake, than mine.

Sir, I mean to say, it does you credit. You attended many meetings?—I did.

Did you ever know a single instance, in which the resolutions were not reduced to writing, and presented to the chair, before they were put from the chair and passed?—As far as my experience went, I have always found, that the resolutions were read from the chair, or by the secretary.

Sir, they could not be read, unless they were in writing, or printed. I ask you, do you not believe, that the resolutions were in writing, before they were read from the chair?—I think they were reduced to writing by the proposer of them: they might have been afterwards transcribed into a thousand other papers.

Do you not believe they were in writing at the time they were proposed?—I have no doubt of it.

Do you not believe that they were entered in a book by the secretary, and signed by the chairman?—I believe, at least, they were signed by the chairman: my belief is founded upon the usual practice in such cases. But I did not see the chairman sign them.

Do you believe, that these resolutions were entered in writing at all?—I think they were written down by the proposer of them.

How many resolutions, in number, passed that day?—Indeed, I cannot exactly answer that question.

Then your memory is not so exact, as the resolutions themselves?—Sometimes resolutions are divided into separate parts, and increase the number; in general, they are designated by first, second, &c. From the notes which I took, and, omitting the resolutions respecting money and thanks, there were five resolutions.

State what the *fourth* resolution was?—As I have taken it, it was, that a committee be appointed to inquire into the state of the penal laws, affecting the Roman Catholics, and give a return of the same within one month.

Was that the *fourth* resolution?—The conviction on my mind is, that it was.

Was it proposed, and passed?—I took it down as such; there might have been alterations.

Was it passed?—It appeared to me to be so; I reported it as such.

Will you swear it passed; because it is most important?—With respect to the fourth resolution, my mind is not so completely made up, as to the others.

From what source does the inaccuracy arise?—I know of no source, but the imperfection of memory to which a man may be liable.

As to the fifth resolution, are you sure?—I am.

Repeat it.

[The witness repeated it.]

Repeat the second.

[Witness did so.]

Were they passed on that day?—They were. Are you positive?—I am.

And the third?—Yes.

Will you swear, that the fourth resolution, or any thing like it, passed?—To the best of my belief, it did. I may not exactly remember all the words.

Was there any other clause, which you have not stated!—There were words which I do not recollect.

Were they material?—As to the impression upon my mind, they were not.

Where are your notes?—I have lost them: there was no intention to destroy them; when they were given to the printer, I did not think it necessary to keep them any longer.

I do not attribute to you any intention to destroy them; but will you swear positively, whether the fourth resolution passed?—It appeared to me to pass; and I took it down, as having passed; but alterations might have been made in it afterwards. They appeared to me to be altered and amplified in the Catholic official paper, The Evening Post, as I saw them afterwards.

Mr. Huddleston, I will not now speak of honour or integrity; but I am appealing to your accuracy. Will you swear, that any thing like the fourth resolution passed?—I stated so, in my report.

That is no evidence. Will you state, that any thing like such a resolution was put from the chair?—To the best of my recollection, it certainly was.

Will you swear, positively?—I have repeated before, my doubts of the exact accuracy of the words of that resolution; I can do no more: I have some doubt whether it was, that the report was to be made, *within a month from the time of the meeting, or a month before the meeting of parliament*. I cannot now say which.

Will you swear, that is the only matter in which you cannot be accurate?—That is the only matter of which I have a doubt.

Lord Chief Justice.—As to all the rest of the fourth resolution, do you say, that the account which you have given, is accurate?—Yes, my lord.

Mr. Gould.—For what paper did you report?—The Hibernian Journal.

A paper not remarkable for its friendship to this cause?—I have reported for others also; I had no particular anxiety about that one.

Who moved that notable fourth resolution?—Do you wish, I should mention the name?

If you please?—Mr. O'Gorman.

Do you mean counsellor O'Gorman?—Yes.

Who moved the first?—Counsellor O'Gorman moved the first four resolutions.

Very good. You say that you saw an official report in the Dublin Evening Post?—What I considered to be official.

Did it appear that lord Fingall signed them?—I cannot charge my memory with what appeared there, only that the resolutions appeared to be mended and amplified.

Will you swear that you do not recollect seeing lord Fingall's name?—To the best of my recollection, it was at the bottom of the publication; but I cannot say positively.

Was not lord Fingall's name mentioned in the *Hibernian Journal*, as having presided at the meeting?—Yes.

And as having signed the resolutions?—No, I think not.

How long is it since you saw your report of the resolutions?—I saw them this day.

In your own hand-writing?—Not since the evening when I made the report for the paper, about four months ago.

Have you taken any pains to refresh your memory?—I have endeavoured to do so. I considered upon the subject several days.

And you have refreshed your memory?—I have.

Did you this day?—I did.

You had no occasion?—I think not.

How did you refresh your memory this day?—By reading certain papers.

What were the papers?—I read a private letter, which does not bear upon these resolutions at all.

He tells the jury that he refreshed his memory by reading a private letter, which did not relate to these resolutions?—It is a private letter, bearing only collaterally upon the subject.

Have you this day refreshed your memory upon this subject?—I have this day read the report, which I gave in the paper.

What was the private letter?—I was reading a letter, which recalled to my mind several of the circumstances; it was a copy of a letter which I had written.

You said you refreshed your memory by reading the newspaper report; how many newspapers did you read?—The report was not comprised in one; it was published in the *Hibernian Journal* of the 11th and 12th of July, which I have here; there are some errors of the press in them.

Was your memory refreshed?—I do not know that it was.

Then how did you refresh your memory, if it was not refreshed?—I had the facts upon my mind; but, to prevent any mistake, I looked over the report.

How long ago is it since you lost your notes?—I do not mean bank-notes?—They were lost or destroyed three months ago as loose papers.

Did you look for them?—I did; if they were destroyed, it was without any intention of mine, or any act of mine, and it was before there was any idea of my appearing as a witness.

I think I saw you reading a paper in court, what was it for?—To prevent a lapse of memory.

I saw you reading a paper in a corner, what was it?—Do you mean a written or a printed paper?

I ask you what it was?—One was the copy of a private letter, and the others were newspapers, containing the printed report.

Where are they?—Here they are; there are many errors of the press.

These are the printed papers; where is the other?—It is a private letter.

You refreshed your memory by reading a private letter?—It has nothing to do with the subject.

How did that refresh your memory?—There is a passage which does bear upon the subject, and which I will read.

Sir, I will not suffer you to read it; to whom was it written?—Am I bound to answer?

Mr. Gould.—You may take the sense of the Court.

Witness.—I have no object in concealing any thing; I wish that all was open as the day; although I suffer much obloquy from appearing here, I am unwilling to do so.

Then, sir, since you have no objection that every thing should be as open as this day, pray tell me to whom the letter was directed?—To sir Charles Saxton.

How long ago was it written?—This is a copy, and the date is not annexed.

About what time was it written?—In last March; and now I think I am entitled to state the passage to which I referred.

I will not permit you to state it as evidence against the traverser. But tell me by what process of the human mind can you make it appear that a letter, written in March, could refresh your memory as to transactions which happened in July following? I tell you fairly, captain Huddleston, that my object is to discredit you, and I am instructed that there are witnesses to be examined to that purpose. Tell me, how could a letter, written in March, bear upon transactions in July?—I can explain, if I am permitted, and I have offered to do so several times.

Mr. Justice Day.—If you wish to explain, you may do so.

Witness.—My lord, the intention is avowed, to asperse my character, and it is natural for me to wish to vindicate myself; therefore, I wish to explain how I was drawn into this business. I attended, as a reporter of the proceedings of the Catholic committee, partly for a small emolument, and partly for my own improvement.

Mr. Gould.—I object to this kind of statement, as evidence against Dr. Sheridan.

Lord Chief Justice Downes.—What part of your evidence do you wish to explain?—My lord, I cannot do it without going into a history of the matter, and how I have been brought into this business.

Mr. Justice Daly.—In your cross-examination by Mr. Gould, you stated that you wrote

a letter to sir Charles Saxton in March. Now explain how that refreshed your memory, as to matters which happened in July?—My lord, that will appear from stating the letter itself. On the 15th of December—

*Mr. Gould.*—My lord, I must object to the witness reading any part of the letter. He may explain any thing that he has said, but he is not to read a letter of his own.

*Lord Chief Justice Downes.*—He wants to explain, in some way, how this letter has a collateral bearing, as he says, upon the subject.

*Mr. Gould.*—My lord, I object to it.

*Lord Chief Justice Downes.*—You ask him how it has such a bearing, and surely he has a right to say how?

*Mr. Justice Daly.*—How can he explain it without looking into the letter.

*Mr. Barrowes.*—My lord, I believe it is best to leave the matter as it is.

*Mr. Gould.*—You wrote, you say, to sir Charles Saxton, a respectable, generous, and liberal man. Was it of your own free will and motion?—It was my act, and written with my hand.

Was it not suggested to you by somebody? Or was it of your own accord, and the prompting of your own mind?—Am I bound to tell with whom I conversed upon it?

No. But whether you wrote in consequence of a suggestion from any person, or from your own free will?—I received a suggestion.

Then you acted from both the one and the other, and you appear now from a motive of public justice?—I will explain the transaction. The proprietor of the *Hibernian Journal* told me one day—

*Mr. Gould.*—I object to your telling what passed between you and the proprietor of the *Hibernian Journal*.

*Mr. Sergeant Ball.*—You ask him a question, and you will not let it be answered. I never saw so unreasonable a mode of cross-examining in my life.

*Mr. Gould.*—I thank you. I like that sort of approbation from an adversary.

*Lord Chief Justice.*—You ask the witness from what motive he acted, and he is going to answer you.

*Witness.*—I waited on sir Charles Saxton, in consequence of what the proprietor said to me, and had a conversation relative to my having attended the Catholic meetings. I told him if I came forward as a witness, I would be exposed to a great deal of reproach and obloquy; but that, if I was obliged to come forward, I would tell what I knew on the subject, without fear.

Do you now say that you are an unwilling witness?—I said it would expose me to much obloquy and reproach.

Are you an unwilling witness?—I am sorry

to come forward; but I cannot say I am unwilling to give evidence.

Have you ever received any favours from government?—I have received numerous favours: I was in the army, and held the situation of barrack-master several years.

Have you received any favours lately?—I have not.

Have you any prospect?—I have not.

Will you swear that?—No certain prospect. About three years ago I applied for a situation, but have been ever since without it, and therefore have no prospect.

How long have you been in this country?—Ten years.

Have you had any knowledge of the earl of Fingall?—I have had the honour of dining in his company.

He is a man of high rank and honour?—He is.

Do you believe that there is any man in his majesty's dominions less disposed to violate the law of the land?—I have the highest opinion of him, and think he would not violate the law.

Do you know lord Southwell?—I know him, but have not been in his company.

*Mr. O'Connell.*—Ask him, Mr. Gould, by whom the fifth resolution was moved.

*Mr. Gould.*—Do you know by whom the fifth resolution was moved?—Do you wish me to name the gentleman?

*Mr. O'Connell.*—Yes, we wish you to name him.—*Mr. Byrne.*

Do you mean Mr. John Byrne of Mullinahack?—I believe it was.

*Mr. Gould.*—My lords, we will not detain the Court further with this witness.

*Mr. Attorney General.*—My lords, we will not produce any other evidence, and close on the part of the Crown. It is now past six o'clock, and the counsel for the traverser have no objection, if it meets the approbation of the Court, to adjourn until to-morrow morning.

*Lord Chief Justice.*—We have no objection to adjourn; and in that case, do the counsel, on either side require any thing particular respecting the jury?

The counsel on both sides answered that they did not; whereupon the jury were permitted to depart.

Friday, November 23, 1811.

The Court sat pursuant to adjournment, and the jury attended.

*Lord Chief Justice.*—We wish to have a matter explained respecting what the witnesses Sheppard and M'Donough swore in their information, and what was stated yesterday. Therefore let James M'Donough be called.

*Mr. Burne.*—My lord, we request that the

other witness, Sheppard, may retire, and be not suffered to be present while the Court is examining M'Donough.

*Lord Chief Justice.*—Certainly; Let him withdraw.

*James M'Donough* examined by the Court.

*Lord Chief Justice Downes.*—You swore yesterday, that you saw Dr. Breene at the meeting in Liffey-street?—Not in the chapel, my lord.

You did not see him in the chapel?—No, my lord.

Did you say, that you saw him?—Not yesterday.

Did you represent; or mean to represent by your informations, that Dr. Breene was there?—My lord, what I meant to represent was this: On coming out of the chapel, amongst the persons coming out, I saw a man whom I believed to be Dr. Breene, and I turned to Sheppard and said to him, I believe that is Dr. Breene, whom we heard spoken of, or called in the chapel.

Pray did you represent in your informations, or mean to do so, that the seven persons who were named, in order to choose the committee of five, were actually present in the chapel?—All the seven, who were named, except Dr. Breene.

Did you mean to except him?—I meant, that he was named, but I did not see him.

Did you mean to represent to the Jury, that the seven persons, who were to retire and elect five, were all present, and retired?—I believe so.

Did you ever swear it?—I only meant that I believed they were all there; I did not see all.

Did you mean to convey in your informations, that those seven persons were actually present at the time?—Yes, my lords, I did mean to convey, that those seven persons were in the chapel.

*Mr. Justice Daly.*—Do you mean to swear positively, that Dr. Breene was there?—I cannot swear, positively, that he was; I only believed it.

*Lord Chief Justice Downes.*—You swore that Mr. Kirwan proposed that seven persons should be nominated?—I did.

Did you mean by that statement to say, that the seven persons, so nominated, were then present?—I did; but I did not see them all.

*Mr. Justice Day.*—Did you mean to say, that you saw the seven persons?—No.

*Lord Chief Justice Downes.*—You swore this—"that Mr. Kirwan proposed, that seven of the persons present, should be nominated to appoint the committee of five:" did you mean to convey by these words, that those seven persons were present?—I did.

*Mr. Justice Osborne.*—Pray, sir, you say, you

heard the names of seven persons called?—Yes, my lord.

*Mr. Breene* was one?—Yes.

You did not see him?—No.

Then how could you say, it was Dr. Breene, when you did not see him?—To the best of my belief, because I heard in the chapel before I left it, that it was Dr. Breene.

*Lord Chief Justice Downes.*—Your information states, that you knew Dr. Breene; did you mean by that, in your informations, to represent, that he was one of the seven who retired?—I meant to say, I believed it.

*Lord Chief Justice Downes.*—Your informations do not go to that.

*Mr. Justice Day.*—You saw five of the seven persons who were nominated; one of the five was Mr. Breene, "whom informant knew to be Dr. Breene?"—Before I left the chapel, I heard it was Dr. Breene.

How could you swear you knew him, when you did not see him?—I believed he was the person; I saw him yesterday, and this day, and believe he is the same person who was named on that day.

But you said you knew him?—I heard his name mentioned, and believed he was the person whom I afterwards saw.

*Lord Chief Justice Downes.*—Do the counsel on either side wish to ask him any thing?

[Counsel on both sides declined.]

*Mr. Driscoll.*—My lord, I beg to refer you to what he said yesterday, that he drew his informations from his notes.

*Mr. O'Connell.*—He said, he never copied his notes, except in drawing his informations.

*Mr. Justice Day.*—Sheppard did not identify any of the seven in his informations, and therefore it is not necessary to call him.

*Lord Chief Justice Downes.*—Mr. Burrows, you may now go on.

#### DEFENCE.

*Mr. Burrows.*—My Lords and Gentlemen of the Jury—It is no common place exaggeration to assert, that the question upon which you are to decide is serious, and interesting in the extreme, and claims your utmost attention. His majesty's attorney-general more than insinuates that the peace of the country and the stability of its government depend upon your verdict. In this I agree with the attorney-general, and I add to the catalogue of things at hazard (what does not much appear to excite his sensibility) the invaluable right of petitioning. But I totally differ from his majesty's attorney-general, as to the mode in which your verdict may affect these great concerns; for it is the firm conviction of my mind, that if you shall, in the person of Mr. Sheridan, attain the Catholic body of Ireland of treasonable practices, all these great objects will be more than hazarded.

I well know, with what inferior weight of talents and influence, I make this contrasted assertion; but I feel—I confidently feel—that this inferiority, great and formidable as it is, is more than counterbalanced by the weight of the cause I advocate. Before I enter upon that cause, I must—I will—freely remark upon what occurred under every eye, and therefore under your own, while you were impanelling. I confess I was astonished to find, that no Roman Catholic was suffered to enter that box, when it is well known, that they equal, if not exceed Protestants upon other occasions, and when the question relates to privileges of which they claim a participation, and you possess a monopoly:—I was astonished to see twenty-two Protestants, persons of the highest respectability set aside by the arbitrary veto of the crown, without any alleged insufficiency, upon the sole demerit of suspected liberality:—I was astonished to find a juror pressed into the box, who did not deny, that he was a sworn Orangeman, and another, who was about to admit, until he was silenced, that he had prejudged the cause. Those occurrences, at the first aspect of them, filled me with unqualified despair. I do not say, that the crown lawyers have had any concern in this revolting process—but I will say, that they ought to have interfered in counteracting a selection which has insulted some of the most loyal men in this city, and must disparage any verdict, which may thus be procured. But, upon a nearer view of the subject, I relinquish the despair by which I was actuated—I rest my hopes upon your known integrity, your deep interest in the welfare of the country, and the very disgust which yourselves must feel at the manner and motive of your array.—You did not press forward into that jury box—you did not seek the exclusion—the total exclusion of any Roman Catholic—you, no doubt, would anxiously desire an intermixture of some of those enlightened Roman Catholics, whom the attorney-general declared, he was certain he could convince, but whom he has not ventured to address in that box. The painful responsibility cast upon you, is not of your own seeking, and I persuade myself, you will upon due reflection feel more indisposed to those, who court and inflame your prejudices, and would involve you in an act of deep responsibility, without that fair intermixture of opposite feelings and interest, which by inviting discussion, and balancing affections, would promise a moderate and respected decision, than towards me, who openly attack your prejudices, and strive to arm your consciences against them. You know, as well as I do, that prejudice is a deadly enemy to fair investigation—that it has neither eyes nor ears for justice—that it hears and sees every thing on one side, that to refute it, is to exasperate it—and that when it predominates, accusation is received as evidence, and calumny produces conviction.

One claim I urge to your justice, which you cannot, you will not refuse.—Listen to the evi-

dence and the arguments with patient attention, and read the indictment, and the act of parliament upon which it is founded, with the minutest care—they will not, I presume, be withheld from you. Upon the law of the case, and the true construction of that act, I shall now proceed to comment.

The act, my lords, is very short, and nothing is more easy, than to extract a just and perfect definition of the crime it declares and enacts to be a high misdemeanor; that definition is “*representing* the people, or any portion “*of the people, under pretence of petitioning “for, or otherwise procuring an alteration of “matters established by law in church or state.”* All persons, who are in any way, or under any name deputed to, or who assume *such a character*, are guilty under this act; and persons in any way electing, or appointing *such assemblies*, namely, assemblies assuming; or exercising a right to *represent* the people, are also guilty. The great question, therefore, will arise upon the true meaning of the term *represent* in this statute. Now, I conceive, that *to represent* any man, or body of men, both in common and legal parlance, means, to fill his or their place, and to possess his or their power, to the exclusion of the body represented, during the representation. The representative acts in his own name, and is invested with all the powers of the body represented; he differs from an attorney, or a man deputed to do a particular act in a defined way—the latter is a mere instrument acting under orders, and in the name of his principal. Such is the meaning, unquestionably of representatives of the people in parliament, and from this meaning spring their principal attributes and qualities; they possess the public rights of the people, and exercise them in their own name, without any obligation to obey, or even to consult their constituents. In the same sense is representative used, as contradistinguished from attorney in all legal relations; the personal representative, the real representative are persons having and exercising rights of their own, in their own name.

If this meaning be adopted, it is not difficult to understand why, to represent the people, or any portion of them, should be a crime at common law, and declared to be such. It is evident, that to give or to assume such a right, would be to encroach upon the exclusive privileges of the House of Commons; and no man can doubt, but that to assume the character, or exercise the functions of any department in the state, legislative, executive, or judicial, is, and always was an high misdemeanor—but it never yet was conceived, that to depute a man, or a number of men, to perform a defined, preconceived legal service, for, and in the name of the persons deputing, was an encroachment upon the rights of parliament, and more particularly, when that very service was to propose a petition to that very parliament. That the legislature uses the word *represent*, in defining the crime, as I explain it,



appears conclusively from this, that knowing, that the House of Commons must fall under the definition, they expressly except it—"Save and except the knights, citizens, and burgesses, elected to serve in the parliament thereof:" so that from the legal and constitutional meaning of the word *represent*; from the excepting the House of Commons from the enactment, and from the legislative avowal, that the evil to be guarded against, was a pre-existing crime; it most clearly follows, that the appointment of deputies *bona fide*, to prepare a petition to parliament, and for no other purpose, cannot be within the act. I entreat those who assert the contrary, to inform the public, whether every act of deputation for the purpose of communicating with the parliament, falls within the act, or where they draw the line. The attorney-general has not drawn any line; will he say, that to depute a few to prepare a petition—or materials for a petition, is criminal? Will such deputation become criminal, if they consume one, two, three, or how many days in executing their commission? Will it be criminal in the mercantile bodies of Dublin, Cork, Waterford and Belfast, should each appoint persons to confer upon the general business of trade, and to prepare a petition to parliament upon the subject? The attorney-general has not furnished any boundary or criterion; and if he succeeds in his construction of the law, no man can say, where the spoliation of a great popular right—I am not ashamed to use the word, much as it has been abused—will stop.

But we are told, that the magistrates are directed and empowered by the law, to disperse the assembly, declared and enacted to be illegal; and we are triumphantly asked, how can they even act, if *false pretence*, or encroachment upon parliamentary privileges be the criterion of guilt? How can they be supposed to know the false pretence, or criminal pursuit? I decline not this test of the meaning of the statute, and I answer, that it is no great evil, in the mind at least of any man who is not a law officer, that great difficulty should obstruct the right of dispersing men who are acting peaceably, and who furnish no pretext for such dispersion, but suspected guilt, and imaginary evil result. If they commit any seditious act, or menace the public peace by riotous or disorderly conduct, the magistrates may disperse them.—If they are associated as usurpers, in the slightest degree, of parliamentary right, he may also disperse them. In the latter case, he must, and he ought to act at his peril; and I hope I never shall live to see the day, when the tranquillity of the country shall be secured by mere extended powers.—But has the attorney-general illumined the intellect of the magistracy upon this subject? Has he defined for their practical guidance, what species of delegates they may disperse, and when they should abstain? Are they warranted to attack the Quakers' meeting?—Are they warranted to disperse the Presbyterian synod in

Ulster? Are they warranted to violate the sanctuary of every deputed Chamber of Commerce in Ireland? Can there be no conference upon subjects of common interest, between persons widely separated, through the medium of agents or committee men (I dread not the phrase) without a previous licence from government? I know not how this may pass in Ireland—but how will this exposition of the common law be relished in England?—for it is clearly, and is avowed to be a common law question, applicable there as well as here—the attorney-general has not explained this, which I wish he may do—I shall not consider it an interruption. What explanation the solicitor-general may give when he shall have the last word, fearless of reply, I cannot anticipate—but certain I am, he cannot, in his way of construing the act, ascertain the right and duty of magistrates, without placing the most precious of our reserved civil rights under their feet.

Gentlemen of the jury, we are surfeited with visionary notions, and republican declamation. We have lost our relish for the old, I hope not obsolete principles of liberty, so cherished by our ancestors. From the abuse of things of the highest worth, we begin to forget their value. This is a most dangerous state, and a most permanent evil. Every important invasion of right has been founded upon an abuse of that right, and has succeeded through the apathy created by such abuse. Let us not fall into this vulgar error—let us give to the government and the people their legitimate rights, and not suffer either to transgress. Few are the rights reserved to the people, or which can be reserved under a stable constitution. The legislature must be sovereign. To ascribe to it actual omnipotence is nonsense and impiety, but to ascribe to it relative omnipotence is rational. No power can question, or resist its acts while it exists; but consistent with this acknowledged supremacy are the *reserved popular right of a free press, and an unshackled right of petitioning*. They are the great pedestals of our free and balanced constitution.—Impair either, and it totters.—Withdraw either, and it falls and crushes the people and their liberties. Do I say, that these privileges are incapable of abuse, and should not be contracted in their exercise by law? No! but I say, that each should be exercised without previous restraint. Let every man publish at his peril—let no man dare exercise any previous control over him—but if he publish a public, or private libel, let the law punish him.—In the same way, suffer nothing to impede the formation, or presenting a petition; but if under the pretext of petitioning, men should assemble and violate the law, vindicate the violated law—but do not do as his majesty's government boasts to have done—suffer the offenders to escape, but attack the privilege which has been abused.

Much has been said about the act of Charles 2nd in England against tumultuous petitioning. This act grew out of the licentiousness in

the reign of Charles 1; and in my opinion, was intended to be repealed by the Bill of Rights. But does it not implicitly recognize and recommend petitioning through delegates? Is not delegation the best remedy of tumultuous petitioning? And will it be said, that the people shall neither petition in numbers, nor through delegates who may collect and communicate their wishes? This cannot be said by any honest statesman. It is always useful to know even the transient sentiment of the people, though it may not always be wise to adopt it. But there are, and ever will be statesmen, who wish to have it stopped; who always claim popular approbation, but never will, if they can avoid it, suffer their pretensions to be brought to any test. There never was a state empiric, who forced a bitter potion down the throats of the people, who did not say he did so, to gratify their craving appetite. To guard against such mockery and insult, is amongst the uses of the right of petitioning. In short, *facit per alium, facit per se*—and conversely, every man being answerable for the acts of others, authorized by him, may depute others to do legal acts; so may many men appoint one or more deputies for defined legal purposes, so may many, having a common object, appoint deputies to confer with other deputies upon the same object—without this, many salutary pursuits might be absolutely frustrated. The concerns of agriculture—the concerns of trade—the concerns of charity—the concerns of religion might be sacrificed.

Neither can the exercise of this right depend upon the number or variety of the persons deputing, or the persons deputed. Such circumstances might, possibly, in some imaginable cases, be an ingredient to be left to a jury, with other evidence to satisfy them, that the purpose avowed was a pretence, and that the real object was, to represent the people, or any portion of them, not to petition parliament, or to execute any defined preconceived object. But if men should be elected, or should assume to represent the people, or any portion of them, for general purposes, and if petitioning should be found by a jury to be a mere pretext, or if such usurpation of the exclusive right of the House of Commons, should, under any pretext, take place; then the assembly so elected, or usurping, would be an illegal assembly from their very constitution, independent of any act, and guilty of an high misdemeanor of a treasonable nature, and liable to a heavy punishment. This is enough for security, and not too much for freedom.

I come now to another principal ingredient in the crime, as defined in the act and the indictment, but which the attorney-general treats as mere form—I mean the allegation, that the assembly, such as it was, was to be constituted *under the pretence* of petitioning parliament. He contends, that pretence here means purpose; and that the crime was complete, even though petitioning was the *bond fide* purpose, and the sole purpose. I cannot think, that any of you,

unless influenced by his authority, can submit to his reasoning. If he be so confident in this opinion, why did he not use the words *for the purpose*, instead of *under the pretence*, in the indictment? Why, my lords, did he not give us an opportunity of demurring to such an indictment, or seeking to arrest the judgment, with a right of going to the dernier resort, if your lordships should decide against us? If the argument be valid, such an indictment must be valid, for although it is good pleading to plead in the language of an act of parliament, it is equally good pleading to use equivalent language. Surely it cannot be intended to persuade you, gentlemen of the jury, to find the allegations of the indictment in one sense, and to pronounce the judgment of the law upon them, as if found in another sense, and in this great question, to leave the traverser without any appeal, though the common sense of all mankind should cry aloud in his favour. I say, if you do find him generally guilty, your verdict will be conclusive, that he, and all with whom he was connected, acted under the *pretence*, obviously meaning *pretext* or *false pretence*, of petitioning parliament. If you believe it to be so, do not hesitate. But if you cannot infer it from the evidence, do not hesitate; this will be equal justice.

How has the attorney-general proved his exposition of the word *pretence*? He contends, that *pretence* means *claim*, true or false. I admit, that *pretence* is sometimes used in this rare acceptation, and that Milton makes some of his devils (I do not recollect whether it be the chief devil) use the phrase “just pretences,” but I assert, that in this statute, it does not mean *claim*. Claim imports some right asserted on one side and disputed on the other. —*Pretence*, in this statute, obviously means, the motive alleged to influence the act; the object, the person pretending, says he is pursuing, and when so used, it invariably imports, either a “*suppressio veri*, or a *suggestio falsi*,” either it holds out a motive, or object of pursuit not at all in contemplation, or it conceals some other motive or object, which solely, or at least principally, actuates the party.

This is still more undeniably so, when the language used is “*under pretence*,” and I think I might safely give up the question, if the attorney-general shall produce a single passage in any English author, where such words are used without importing either falsehood or disguise. I cannot avoid making this general remark; the legislature is about to define an high misdemeanor, it uses a word, having, at least nineteen times out of twenty, a criminal meaning, but having rarely a neutral, or innocent meaning. It is to be presumed, that when so used, in defining a crime, it is to be taken in its rare and innocent sense, and not in its usual and criminal sense. I much fear, if you were to find the traverser guilty, the word *pretence* could not be construed upon the record in any other than a criminal import, when punishment should be applied to the

crime. But, my lords, the attorney-general has cited those statutes upon which he relies; he refers you to the 32nd Hen. 8th, in England, the same as 10 Char. 1st in Ireland. This is an act to prevent the sale of "pretensed rights or titles" by persons not having possession; and he cites lord Coke, to show, that in expounding that statute, it was considered as immaterial, whether the right sold was a good or bad title. Lord Coke could not have otherwise decided, without manifest absurdity; but, can the attorney-general seriously contend, that "pretensed title" in that statute, and *pretence* in the present, have in their meaning any affinity to each other? Does he really think, that the word *pretences*, in the act under discussion, means *claim*, and that the legislature referred to persons, who should assemble to assert their right or title to petition?—Was such a right ever disputed?—Could it be presumed it would ever be disputed? No; the legislature obviously meant to refer to persons, who, holding out the *false* and affected purpose of exercising an unquestionable and unquestioned right, should really, and in fact, assemble for other dangerous and disguised purposes. Such is the meaning, which every plain understanding must extract from this statute; and it would be a sad necessity, if a legal or judicial mind should be compelled to construe it in a sense far from its so obvious and manifest import.

Neither do I feel any force from the epithet *false*, applied to *pretence*, in the statute punishing the obtaining of goods or money upon false pretences. Nothing is more common, than to add by epithet, what is comprehended in the principal and substantive word. Wilful and malicious murder, wilful and corrupt perjury, are combinations in daily use, and occur in every indictment upon the subject; yet no man could doubt, but that murder, and perjury, would imply these epithets, when used without them, either in statutes, or in any other writing, "*expressio eorum quæ taciti insunt nil operatur.*" The statute of Chas. 2nd, against tumultuous petitioning, appears to me to be as little illustrative of the attorney-general's meaning as the others. It enacts, "that no person or persons shall repair to his majesty, or both or either houses of parliament, upon pretence of delivering any petition accompanied with an excessive number."

In the case here stated, the *pretence*, from the very nature of the subject, must be *false*, for it is impossible to conceive the accompaniment of an excessive crowd necessary to the mere delivery of a petition. Therefore it is quite reasonable, to infer a violation of the act, from such accompaniment. But can the same reasoning apply to preparing a petition, preparing materials upon the subject, discussing the subject, and collecting the sentiments of those, who are most interested upon it? But, my lords, and gentlemen of the jury, all this reasoning is superfluous upon my part; the legislature, as if presaging that in after-times

some effort might be made to curtail the privilege of petitioning, under this statute, have shielded that noble privilege against all possible misrepresentation; for in the final section, it is enacted, "Provided that nothing herein shall be construed in any manner to prevent or impede the undoubted right of his majesty's subjects of this realm to petition his majesty, or both houses or either house of parliament, for redress of any public or private grievance."

The attorney-general has founded an argument upon this proviso, being in the fourth and last section of the act, and not in the first section, where the crime is defined. As I cannot comprehend this distinction, I shall not attempt to combat it; but I will appeal to the common sense, or the professional sense of all who hear me, whether words could be derived, more perfectly and comprehensively protecting a right from impairment or diminution? Try it by this criterion;—suppose it was agreed by every member of parliament, to leave the right, and the exercise of the right of petitioning uncontroverted, and to provide a clause for the purpose, and suppose this clause was proposed, as sufficient for the purpose, would the most jealous and suspecting advocate for popular rights reasonably object to it? If he did, would he not be considered as factious and unreasonable? But attend to the words, "nothing in the act shall be construed in any manner to impede the undoubted right to petition," can it be said that deputation cannot afford any facility to the exercise of the right of petitioning? On the contrary, is it not manifest, that in many cases (and in none so strongly as in the present), without the aid and instrumentality of agents, or deputies, or committees (I care not what name is used, while the purpose is *innocent and laudable*), this invaluable privilege would lose more than half its value? And is it not equally manifest, that to take away such facilities, in the exercise and enjoyment of such a right, would be in some degree to impede it?

This appears to me to be too plain to need farther enforcement or illustration. But suppose the statute obscure or doubtful; in such cases the history of the times, and the evil to be remedied, are always looked to, for the interpretation of the true meaning.

What was the evil which in 1793 induced the attorney-general, and the government of that day, to introduce this bill? In stating it, I am vindicating the memory of that attorney-general, and of that government, from the misconstruction; and the misapplication of the act, by their successors of the present day. There existed, shortly previous to the enactment of that law, a body representing the whole province of Ulster in the illegal and dangerous sense which I have ascribed to the term. They sat at Dungannon; they acted, and resolved in their own names, in general representatives of that province. They abstained from no subject, legislative, or execu-

five. They did not confine themselves, or pretend to confine themselves to any defined, *preconceived* object. They did not pretend to seek even a subsequent adoption, or ratification of the measures, or resolutions they adopted; their avowed purpose was, to destroy, or, new-model, all or most of the ancient and venerable departments of the state and constitution. They would annihilate the boroughs, purge the House of Lords of ecclesiastical intermixture, extend the elective franchise to the whole rabble, interfere with the executive in the prerogative of making peace and war, and in short, control and dictate upon every subject. In the name of God, can any man say, there is any resemblance between an assembly, such as I have described, and a Catholic committee (such as I acknowledge is now in existence), for the *sole bonâ fide* purpose of preparing a *petition* for the subsequent ratification and adoption of individuals of their body? If the truth of the alleged purpose be doubted, let that question be left to any jury, however selected for their prejudices, provided they be, like you, men of sense and integrity. This representative body of Ulster had actually convoked a representative body of the whole people of Ireland, to sit at Athlone, upon the exact principles of their own formation. It was against this portentous and unconstitutional assembly, that the Convention act was provided, and not against any Catholic committee, either then in existence or meditated, as I shall hereafter more fully demonstrate. But I shall first lay before you the resolutions of the Ulster Convention held at Dungannon, taken from a pamphlet, published at the time by Mr. Joseph Pollock, now chairman of the county of Down. He was himself a member of that Convention, and his mind being awakened to a sense of the unconstitutional nature, and dangerous tendency of that assembly, he publicly and manfully warned the parliament and the nation against them; listen, I entreat you, to their resolutions; they were passed on the 15th of February, 1793, while parliament was sitting.

“Resolved, that it is the constitutional right of the people, and essential to the very being of their liberty, to be fully and fairly represented in their own house of parliament.

“That the present state of the representation in the House of Commons is partial and inadequate, subversive of the rights of the people, and an intolerable grievance.

“That it appears to us, that several words spiritual and temporal, as well as commons, direct the return of more than two hundred members of the Irish House of Commons, being not one third of the representation of the people.

“That it is the opinion of this meeting, that all boroughs should be disfranchised, and representation established on a fair and rational principle, by extending the elective franchise equally to persons of every religious persuasion; by elections frequently repeated,

“and by a distribution of representatives, proportioned to the population and wealth of the country.

“That deeming a complete parliamentary reform, essential to the peace, liberty and happiness of the people, we do most solemnly pledge ourselves to each other, and to our country, that we will never abandon the pursuit of this important object; but zealously and steadily persevere, until a full and fair representation of the people shall be unequivocally obtained.

“That a power be vested in a committee, consisting of thirty persons, for the purpose of re-convoing this assembly (as occasion may arise) until the constituent body is pleased to return another representation of the province. AND THAT on a recommendation by letter to William Sharnan, esq. at Moira, signed by seven of the committee, he shall by circular letter to the rest, procure the sense of a majority, and if the measure of a provincial meeting be by them approved of, he shall forthwith issue a summons in the name of the committee for that purpose (Here follow the names of the committee).

“That the above-named committee be authorized to communicate with the other provinces of the kingdom at this important crisis, and to consult proper means of calling a National Convention at a future day, should circumstances render such a meeting unavoidably necessary.

“Resolved, that we behold with indignation an intention of embodying a MILITIA in this kingdom, a measure which only has ministerial influence for its object, which we deem burdensome and totally unnecessary.

“Resolved unanimously, that it is with infinite concern we behold the kingdom likely to be involved in the horrors and expenses of a foreign war; a war by which, as a nation, we can gain nothing; but on the contrary, must expose our commerce to depredation, and our country to unprovoked hostility.”

That the meditated Athlone convention, and not the Roman Catholic committee was the object, as well as the cause, of this act, will fully appear from the debates upon it. Mr. Wolfe, the attorney-general of the day, and Mr. Hobart, the chief secretary, the framers and introducers of the act, expressly disclaim any reference to the Catholic committee, or any intention to interfere with the right of deputation for any limited, *preconceived*, object; and although the opposition of the day did resist it, as touching upon the right of petitioning, it is much more reasonable to take the sense of the House from those with whom a vast majority agreed, and voted, than from the jealous construction of a few opposition members.

Gentlemen, I will read you a few extracts from the debates upon that occasion.

—Lord Chief Justice DOWDER.—Recollect for a moment. Is there any such rule for the construction of acts of parliament, as to refer to the debates.

Mr. Barrow.—I am extremely obliged to your lordship; I submit to the opinion of the Court, and shall no further mention those debates; but I shall refer you to cotemporary evidence, at once admissible, and, to my understanding, conclusive upon the subject. I mean, the act of the 33rd of the king, the very act, from which the attorney-general read the affecting detail of the remaining Roman Catholic restrictions; this act, containing such liberal concessions to the Roman Catholic body, was passed in the same sessions, with the Convention act, and perhaps received the royal assent the very same day.\* It was the result of a petition framed by the Catholic committee—Roman Catholic deputies, avowed members of that committee, negotiated again and again with the Irish government, and with the English government, particularly with Mr. Pitt and Mr. Dundas, upon the subject; they were introduced to, and graciously received by the king himself about that period. It was then deemed wise, and constitutional, to hold intercourse with men who understood and could truly communicate the sentiments and feelings of their community. I shall read the recital of that act.

“Whereas various acts of parliament have been passed, imposing on his majesty’s subjects, professing the Roman Catholic religion, many restraints and disabilities, and, from the peaceable and loyal demeanor of his majesty’s Popish or Roman Catholic subjects, it is fit that such restraints and disabilities be discontinued.” Now I ask, is not this recital decisive evidence that the legislature did not consider the Roman Catholic Convention, through whose mediation the very act passed, an illegal or unconstitutional assembly? Or is it to be conceived that they would pass an act with such a recital, and immediately after denounce the body, through whose mediation it was obtained? Such a supposition would not be more derogatory to the character of the Roman Catholic than to the truth and consistency of parliament. The attorney-general cannot conceive any use in delegation—he says it would require only a capacity of writing a few lines, praying a repeal of the test acts, which any individual might perform, to bring the Catholic demands fully before parliament, where, no doubt, however introduced, they would receive a full and candid discussion. My right honourable and learned friend is one of the worthiest and ablest men living; but I will take the liberty of telling him that he is in Boeotian darkness, as to either the history or present state of his Roman Catholic brethren, otherwise he would not speak as he has spoken—act as he has acted. I will tell him that something more than the simple process he recommends, is, was, and always will be, necessary to a dis-

cussion of the claims of a people seeking a restoration of privileges of which they have been deprived; I will tell him that if the Roman Catholics of Ireland had confined themselves to the simple mode which he recommends, they would not now be a people, or Ireland a nation. I will give him a very summary review of the proceedings of the Roman Catholics, in order that he may judge, from experience, whether delegated committees were serviceable.

From the Revolution to the accession of Geo. 2nd, the Roman Catholics were mute, they did not address the crown, or the parliament, for any amelioration of their state; they merely made faint efforts to resist each additional penal law. During that period they were in a condition more abject and grovelling (to borrow a phrase from a learned and eloquent friend of mine) than the beast that browsed upon the land which they cultivated by their labour. Their silence, their declining to address the crown or the parliament, during that period, was frequently commented upon, as indicating a dissatisfied and stubborn spirit. It was so construed by the Tories during the reign of queen Anne, and by the Whigs during the reign of George the 1st, and furnished both with a pretence, amongst others, of adding largely to the penal code. Upon the accession of George 2nd, in 1727, it was deemed advisable to break this silence, and silence this pretence; and, accordingly, lord Delvin and the principal of the Roman Catholic gentry, presented a most loyal and dutiful address from the Catholic body to the then lords justices, to be presented to the throne. It never has been found an easy task for the oppressed to please his oppressor. To this loyal address no answer was given—no public notice was ever taken of it—possibly it never reached the king’s hand, and that, if it did, it might have touched his heart. But it did not pass wholly unnoticed and without effect. Primate Boulter, in a letter to lord Carteret, professes much alarm at this first act of the Catholics as a community—he seems to consider it as a most portentous phenomenon; and immediately after, in the very same year, by the 1 Geo. 3, c. 9, sect. 7, they were deprived of the elective franchise. The following year a bill was introduced to prevent Roman Catholics from acting as solicitors. Several individuals, in Cork and in Dublin, raised a subscription to defray the expense of opposing this bill—an interdicted priest gave information of this foul conspiracy (as it was called) to bring in the pope and pretender. The transaction was referred to a committee of the House of Commons, who actually reported that 5*l.* was collected, and resolved, that it appeared to them that, under the pretence of opposing heads of bills, sums of money had been collected, and a fund established by the popish inhabitants of the kingdom, highly detrimental to the Protestant interest; and they resolved to address the lord lieutenant, that he might issue his pro-

\* One of the jury here asked for the act of parliament, and several copies were handed to the jury.

clamation to all magistrates to put the laws against popery into execution. This, I presume, is the precedent upon which the attorney-general has founded his advice to his majesty's government to issue his proclamation to magistrates, to disperse Roman Catholics who should assemble, as delegates, for the purpose, or under the pretence of petitioning. So far the Roman Catholic concerns proceeded, without any committee or delegation—with what success is too well known.

In the year 1757, upon the appointment of the duke of Bedford to the vice-royalty of Ireland, the prospect of the Roman Catholic people began to brighten, and, at the same period, a committee was formed to act for them, and, from that hour to the present, they have, at all times, when they approached parliament or government for any relaxation or favour, acted through the intervention of persons delegated at different times, in different ways, and varying as to rank and numbers. These committee men, or delegates openly acted for, and in the name of the Roman Catholic people, conferred with successive governments, were principally instrumental, by their zeal, industry, and talents, in procuring every relaxation of the penal code, and never, until this day, incurred the suspicion or displeasure of any government.

In 1757, under the auspices of the duke of Bedford, and, with his concurrence, a most satisfactory public declaration of religious opinions, as far as they related to civil duties, calculated to dissipate the false notions at all times entertained upon the subject, was made and published by the whole Roman Catholic clergy of Ireland. Immediately after was the first Roman Catholic committee formed, with the entire approbation of the same viceroy which assembled and met in the Globe Tavern in Essex-street. Among the first committee-men were some men well known to literature, Dr. Curry, O'Connor the antiquary, and Mr. Wyse of Waterford. This committee was shortly after enlarged, according to a plan of more extended delegation proposed by Mr. Wyse. In 1759 the duke of Bedford delivered a message to parliament, from the king, desiring them to provide against invasion. How the Roman Catholic people felt or would act upon such an event was a matter of serious expectation to all. If there was any reason to doubt it, the liberal and enlightened policy of the duke of Bedford removed all doubt; and, upon the first alarm of the invasion of Conflans, the Roman Catholic committee prepared a loyal and animated address, which was submitted to their body, at a public meeting in Dublin, and was signed by above 800 merchants and others, and was then presented to John Ponsonby, the Speaker, by Messrs. Crump and M'Dermott, committee-men, to be transmitted by him to the lord lieutenant. A most gracious answer to this address was returned, and published in the gazette. The Speaker summoned the two delegates to the

House of Commons, and, at his instance, the address was then read: Mr. M'Dermott, in the name of his body, thanked the Speaker for his condescension, and the Speaker replied in flattering language.

From the first formation of a Roman Catholic committee to this day, it was either continued, or was called into existence whenever any subject of discussion arose between that body and government, or parliament. Every relaxation of the law which was obtained, is principally ascribable to their zeal, activity, and perseverance.

The attorney-general is well acquainted with the truth of the maxim, "*les vigilantes non dormientibus inservit*;" and he may rest assured that the maxim is as true in politics as in law. The first territorial acquisition of the Catholic body was not very splendid. By the 11 and 12 Geo. 3, they are enabled to take fifty acres of unprofitable bog for sixty one years, with half an acre of arable land adjoining, provided, that it should not be within one mile of a town, and that the lease should be void if half the lands should not be reclaimed within twenty-one years. In 1777, they obtained, through their committee, a most important concession, the right of taking leases for long terms for years, and of devising their lands. In 1782 their committee again acted; their claims, their condition, and their conduct, were brought into public, and full discussion. Several disabilities were removed, and they were placed on a footing of perfect equality with their Protestant brethren, in respect of the right of acquiring or disposing of lands. From this concession, political equality appears to me to follow, as a certain corollary, however, for a time, it may be thwarted or postponed. In 1792, this *modernly denounced* committee were again in activity, and the bar was thrown open to the Roman Catholic body, with, however, a most impolitic proviso, that no Roman Catholic should be appointed a king's counsel; that is, precaution was taken; when they were invited, and received into a profession, which, above all others, improves popular talents, and gains popular influence, that they should be in habitual, and, as it were, regimented opposition to the crown upon all questions of prerogative which might arise in our courts, and that even the king should not be empowered to entitle himself to the permanent service of any of them, be his talents ever so splendid, his learning ever so pre-eminent. But when did pride or prejudice ever reason? In 1793, the Roman Catholic committee made their last successful effort. I have forestalled much, indeed almost all, that I intended to say upon that committee and that period. It consisted of delegates from all the counties, and was somewhat more numerous and more fully attended than the former committees; principally, because it had been asserted, as it is still asserted, that the Roman Catholic people at large, felt no interest in Roman Catholic emancipation. A

foul and unnatural calumny upon the good sense and sensibility of an intelligent and feeling nation!

I shall again refer you to that affecting catalogue of privations which the attorney-general read, with such visible, involuntary, public sensation; and shall tell you that that catalogue details but a small portion of privileges, from which the Roman Catholic people are shut out. The orders of council to which they are left subject, have a most extensive operation, and they are, in effect, deprived of the enjoyment of almost every privilege given to freemen in corporate towns, in a kingdom where corporations abound, and where those exclusive privileges are so rigidly asserted. They are also subject to several important disabilities not connected with the test acts. For instance, no Roman Catholic, though he should possess half—the whole, bank of Ireland stock, can be a director of the Bank of Ireland. These restrictions and exclusions meet the Roman Catholics in every quarter of Ireland; and affect his interest, and hurt his feelings, in a thousand ways, not known to my right hon. friend. But suppose it otherwise; suppose the higher orders alone interested in the present Catholic question; suppose the higher orders alone labour under disabilities, can the attorney-general know so little of human nature as not to feel that the lower orders will make common cause with the higher orders of their sect, even in matters of mere pride and speculation? In my opinion, if the only difference between the Protestant and the Catholic were, that the latter should be prohibited from wearing lace upon their clothes, or having livery servants, this ridiculous and invidious distinction would be felt by the meanest peasant, and might, at some unlucky crisis, produce the most disastrous consequences. I, therefore, do assert, that no candid man, who understands the Catholic question, and the state and condition of the Catholic people, can think it a mere form to petition, or deny the utility of delegation, towards effecting the laudable purpose and constitutional object of their pursuit. Suppose it were true that all the restrictions might be removed by the repeal of the test act; and that such repeal might be effected by a single line, does it follow, that no measures ought to be or can be legally adopted, to induce the government or parliament to enact that short and simple bill? Is it impossible that ignorance might exist as to the variety and extent of the very restrictions, and misrepresentation or misunderstanding prevail, as to the grounds upon which they were imposed, and the probable consequences of their removal? Gentlemen, such things are not only possible, but certain; and, although Protestant liberality has made great advances in modern times, although rooted prejudices have been dislodged, although the Roman Catholic of this day has received from the Protestant of this day concessions calculated to obliterate, and

which have almost obliterated all recollection of past animosities, all reflection of the barbarous and civil dissensions which disgraced our ancestors and embittered their lives, although much has been done, much still remains to be done; and, until that shall be done, we cannot feel the confidence of an united people: the enemy will not feel the terror with which such a character must ever strike the invader. Instead, therefore, of impeding the object of this delegated committee, it ought to be the anxious wish of every good Irishman, and every loyal subject, to give it full success; to wipe away, at once, at this most interesting moment, all restrictions and distinctions; to invite our Roman Catholic brethren to a full participation of every civil right, and to bind them by interest, gratitude, and affection, to unite, with heart and hand, in defending our common rights, our common country, and our common constitution.

In dismissing this subject, so barren in evidence, and so pregnant in observation, I had nearly forgotten an important topic. I really think, that if the Convention acted seriously and liberally construed, the admitted object of Catholic pursuit would, in itself, exclude them from the operation of the law, and that they ought not to be considered, or treated, as men seeking an alteration of "matters established by law in church and state." Recollect, that they are not seeking to innovate or destroy—they seek not to pull down the common institutions of our common ancestors—they seek not to annihilate any, even the lowest department of the state—they only require to be received, and treated, as joint proprietors, and co-heirs of our noble constitution—they seek to widen its basis, and add new pillars and supporters to the edifice of liberty and law. In doing this—let it not be mistaken, that they look to any transfer of power, or any direct, or immediate investiture with any privilege; no, they merely seek capacity, and leave the right of conferring it, where it pre-existed. They seek to unshackle the prerogative of the crown—they seek to give to the electors a wider range of choice—they seek to vindicate the best principles of every free constitution—the connexion between property and power. In every well regulated state, property and power are connected in all its departments; to separate them, is to sow the seeds of disease and agitation. They gaze, towards each other, with as fixed a law, as prevails in the physical world, and tranquillity cannot exist under their forced and unnatural separation. They must—they will finally unite. Either property will clothe itself with power, or power will seize upon property. In a pure despotism, there is but one proprietor—so that in fact the Roman Catholics are seeking—not only the grace—but the shield of property—not only what would adorn but what would secure their acquisitions. Can it be just—can it be wise, at any time, or in any country, to disfranchise property and rank of

their legitimate, and constitutional trusts? Can it be wise or politic to permit the great bulk of a nation to accumulate property without bounds, and to acquire lands and interests in lands without limit, and to close against them the avenues to all the great honours and distinctions of the state? Ambition is a passion natural to man;—and if great proprietors, and their descendants be shut out from all legitimate gratification of that ineradicable appetite, they will be tempted to courses and pursuits, equally dangerous to the community, and themselves. In a country, so mis-organized; if ever there should arise a strife between the lower and higher orders;—if ever republican frenzy should agitate the country, talent and wealth will be driven into the ranks of folly and disorder, to discipline and lead them! These observations—at all times true—apply with augmented force since the Union, and from a consideration of the grand strife in which these united islands are engaged. It must be the first wish of every honest subject to render that union universally effectual, to the purpose of uniting every heart and hand against the common enemy. Such was the avowed object of the statesman who proposed that measure, of which Catholic emancipation was intended to be a part. It is the anxious wish of those who opposed it, and of some more than me, that that object should be accomplished. Perhaps, they would not consider the merger of national independence as too great a price for so inestimable an attainment. But while the Roman Catholics are excluded from a participation of the offices, and honours, and power of the state, can there be any thing like national amalgamation? Can the Roman Catholics of Ireland be taught to feel—Is it possible, in fact, that they will feel—that there is a fair legislative union between the nations? But will they not be effectually told, by every man who wishes to inflame them—will not their own feelings tell them, that Ireland is more than ever provincial? Will not exclusive Protestant legislation be felt by them as the disfranchisement of Ireland? On the contrary, by giving full effect to the pursuit for which Mr. Sheridan is sought to be convicted, we render the nation really, and not nominally united. We enable the crown to animate the zeal, and reward the exertions of its Roman Catholic subjects in every department. We take from the enemy a formidable reinforcement of irritation and disaffection; and we interest and unite all the property, talent and feeling of the nation, in defence of the common cause.

I would appeal to my right hon. friend himself, whether, what I state be not founded in truth and nature. He has carried an ample fortune and an high reputation. He has children to inherit his acquisitions, and who are, no doubt, emulous to tread in his path. Would he be satisfied to leave them his property bereft of the privileges properly incident to it? Would he feel at ease, if all incentives to legitimate ambition were extinguished, and

their feelings were exposed to dangerous ambition? I think he would not. I well know that his rooted loyalty and strong reason would protect him from treason and even sedition; but he would pine under restraints that robbed his acquisitions of more than half their value; and he would lament, that he had not exerted his great talents; and planted his family in some other soil.

The attorney-general has entered largely into a defence; indeed a panegyric of his majesty's government in Ireland; for their proclamations against—I will say it, though he does not admit it—the Roman Catholic people of Ireland—and of this, avowedly, state prosecution. I applaud his manly avowal; that he advised those state acts, though I cannot but lament the gross indiscretion of such advice; from whatever quarter it might originate. His own statement, in my opinion, condemns both the justice and policy of the measure. He has stated, that a series of seditious, and inflammatory libels, too gross for the seditious press of this city (to use his own language), was daily, and publicly uttered; in a committee, with whom he has not so much has attempted, to connect the present Roman Catholic committed by any evidence. He expatiated upon the patience and temper of the Irish government; in calmly witnessing, and submitting to such outrages, and waiting for the voluntary death, and dissolution of that assembly. He has more than insinuated, that that assembly was bottomed in treason, and has exerted himself much, to alarm your fears; and excite your prejudices, by the picture he has drawn of their conduct and designs.

Is it possible to hear this; without, at once, seeing its irrelevancy and unfairness? Is the present committee to be condemned, and punished for their mere existence, because there was another committee, in which individuals were intemperate and seditious? He ought not to be listened to, while stating such enormities, which, if they existed, should have called forth, and must have called forth, the vigour of the law. But to suppose his statement perfectly true, and unexaggerated, what is the reasonable inference? Not that a subsequent committee, of which the Fingals, the Southwells, the Barrwells, the Billews and the Byrnes—the Catholic prelates, and the Catholic peers—those individuals and classes of the Roman Catholic body in whom every previous Irish government placed unbounded confidence—composed a part, should be denounced; and dispersed, independent of any act, or the expression of any sentiment; but that the government, which should suffer such outrage to go unpunished (if any there were) and should attempt to punish, where no offence has been committed, or is likely to be committed, are themselves objects of the justest condemnation.

But there is a further, and more alarming inference—one, in which Catholics and Protestants, Irishmen and Englishmen are equally



interested. It is, that government is not prosecuting the *crime*, but hunting down the *privilege*—that they have no desire to punish any offender, be he ever so atrocious, but cannot endure, that the privilege of petitioning should assume such a shape, as that the sentiment of the whole people should be unquestionably pronounced. If this be their object (as it unquestionably is) they have acted with judgment; they have acted with candour. They have attacked the privilege in its strongest hold; they have attacked it where it is most defensible. They have hazarded defeat; but if they obtain a victory, the privilege is for ever vanquished. The precedent of this day will be pleaded against every species of delegation, and when the concentrated force is routed, it will be easy to disperse, misrepresent, and put down individual petitions. I look to you for protection against such consequences. The Irish government, instead of claiming credit for their conduct, should, in my opinion, say (sinners as they are) "We have left undone those things which we ought to have done, and we have done those things which we ought not to have done." Their conduct resembles that of an intoxicated bravo, who being too much oppressed by liquor to resist real, or imaginary injuries, or insults, as soon as he becomes semi-sober and semi-vigilant, should rush forth into the highway, and knock down every man he meets—peer, prelate, or peasant.

I fear, my lords, I have committed an unwarrantable trespass upon the public time. In doing so, I have but followed the example of my honourable and learned friend, who has said so much upon general subjects, and so little upon the case of the traverser; whose gigantic statement is so disproportioned to the pigmy proofs that followed it. I fear I have even exceeded him in prolixity, which you will rather ascribe to his superior powers of condensation, than to any desire, upon my part, to dwell unnecessarily upon any topic. In truth, when I turn my attention to the facts in evidence, my astonishment is increased, that Dr. Sheridan was ever brought to trial. Shut out from your minds the aspersions which have been cast upon other men. Disengage your loyal feelings from that appeal, which has been so artfully addressed to them; do the traverser the justice, of not presuming, that he must have bad designs, because he is a Roman Catholic, and of not ascribing to him every seditious act, committed by, or ascribed to, every man of his religion. Which of yourselves could bear this test? Try him, as every man should be tried, by his own acts, established in evidence against him; and see what that evidence is. Two witnesses were examined, who swore that Dr. Sheridan presided at a meeting of Roman Catholics, who elected five persons to prepare a petition, and they added, to represent them in a Catholic committee; one of them afterwards retracted the word *represent*, as forming any part of the resolutions passed,

and positively swore it did not; the other swore, that he could not be certain, that the word *represent* was used, and they both admitted, that they had the very resolutions in writing, and gave them in writing to those who conduct the prosecution. I do not think the word "*represent*," can avail any thing. If delegates were appointed, in a criminal sense to represent the people, no form of language could vary the offence, or shelter the culprit; and if the delegation was from its object innocent, no phraseology could render it guilty; I strongly suspect, that those who managed this evidence, and kept back the writing, are of a different opinion. But if the word were considered as important, it is impossible, that you, upon the evidence, can assume that it was used. From those witnesses, it appeared, that no other business than that of petitioning was mentioned, and one of them swore, that he believed no other object was in contemplation, and that he believed, that the petition, when prepared, was to be submitted to the individual Catholics, for their adoption and signature. If the evidence stopped here, would the attorney general say, Mr. Sheridan was guilty under the Convention Act? He must say so, for he has not drawn any line, and has levelled his argument and this prosecution against all delegation, or deputation, for the purpose of petitioning. That which is expressly protected by the act, would appear, as he construes it, to constitute the offence. But the evidence has not stopped here; Mr. Huddleston, whose evidence I do not mean to impeach, has proved, from memory, the following resolution, as having passed an aggregate meeting.

"Resolved, That said committee do consist of the Catholic peers, and their eldest sons, the Catholic baronets, the prelates of the Catholic church in Ireland, and also ten persons to be appointed by the Catholics in each county in Ireland, the survivors of the delegates 1793 to constitute an integral part of that number, and also of five persons to be appointed by the Catholic inhabitants of each parish in Dublin."

Now, I do not think, that those resolutions are sufficiently proved by parol evidence, it appearing that they exist in writing, to be received as the act of that aggregate body, so as to affect persons not present; but I shall waive this objection. I boldly, and confidently maintain, that there is nothing in these resolutions, or in a committee formed upon them, seditious, illegal, or violatory of the Convention act; and if all I have said be not erroneous, I have already established, that such an assembly is not, as it is contended to be upon the other side, illegal, independent of any concealed or illegal pursuit, or any libellous or seditious speeches used in it, when assembled; and I repeat it, and it cannot be too often repeated and inculcated, that to decide otherwise, will be vitally to injure the right of petitioning, and totally to disregard the constitutional saving of the Convention act.

All the resolutions given in evidence, are precisely conformable to the functions invariably performed by Catholic committees since their formation; and I cannot discover any part of them denoting any bad object, criminal motive, or illegal pursuit. The resolution defining the constituent parts of the committee has been much relied upon, and grossly misrepresented. How does this part of the case fairly stand? A committee is formed to collect information, to prepare a petition, to suggest arguments in favour of that petition, to discover prejudices that impede, to obviate difficulties, to solicit support, in short in every rational and fair way to promote the success of that petition. The disabilities sought to be removed affect the peers, affect the commons, affect those who reside in counties, affect those who reside in cities—in short affect every order and department of the Roman Catholic community; and it is now objected, that there are deputies from every order; and it is farther objected, that the few persons, who now survive, of the committee of 1793, so favoured and cherished by the then government and parliament, are members of the committee. They are called estates general, are represented as usurping all the functions of the legislature and government. This is cruel mockery! If such be their constitution, or their views, they are guilty of high treason, and ought to be prosecuted as such. But shall this be taken upon assertion? Shall this assembly be deemed illegal, because it has received an infusion of the peers and the prelates, who have always been considered as a counterpoise to the too great eagerness of popular pursuit? If the prelates and the peers had been omitted, the clamour against the committee would have been much louder, and much more plausible; but the utmost effect that the numbers and constitution of the committee can have is, to become an ingredient in a jury question, if any jury question could arise, as to the real object and pursuit of such committee. Doctor Sheridan challenges such a question to be left to any jury, but they do not venture it upon the other side, but call for your verdict, upon the ground of general, unevicted and unapplied imputation, and a gross misconstruction of the Convention act.

Upon this inexhaustible subject, I have left much unsaid; yet, upon the grounds I have urged, I shall now leave it to your decision, only again imploring you, to read the charge which you are sworn to try, and to compare it with the evidence which you have heard from the witnesses, and not with the calumnies which have been every where uttered. To find the traverser guilty, you must, upon your oaths, find in the very language of the indictment, that the Catholic committee intended to be appointed, was to be "a committee of persons professing the Roman Catholic religion, to be thereafter held, and to exercise a right and authority to represent the inhabitants of Ireland, professing the Roman Catholic

religion, under pretence of preparing petitions to parliament." You must, in fact, convict the Roman Catholic subjects of this realm, of an offence approaching to high treason. You have no evidence to warrant this; and you cannot have any rational wish to create or supply such evidence. The Catholic body of this day owe their Protestant brethren of this day great obligations. Believe me, they are deeply sensible of the debt, and are not the less worthy to have that debt augmented, by the eagerness they display to be fully emancipated, to be perfectly amalgamated with you in constitutional co-existence. No wise and good man would wish at any time, to disappoint this laudable impulse. No man, not a maniac, would seek to disappoint it a moment, when all that is dear to us is in such peril, that united enthusiastic efforts are necessary to common security. Your Roman Catholic brethren await a verdict which is to pronounce upon their principles and pursuits, with agonizing anxiety. There is not a city, town, village, or hamlet in Ireland, in which the result is not, at this moment, looked for, with breathless expectation. It is looked for in England, with little less anxiety. They cannot be indifferent to the truth or falsehood of the charge made by the *Irish government* upon the Roman Catholic subjects of *Ireland*. It is looked for, by the common enemy, with an anxious wish, that the accusation may be true—he must derive the highest gratification, and possibly the strongest motive to act, from a Protestant verdict against the Roman Catholic people.

Gentlemen, pronounce a verdict of Not Guilty; relieve your fellow-subjects, and disappoint the common enemy. Do not apprehend, that so gratifying a result would be followed up by intemperate joy, or dangerous exultation. No bad feeling can mix with the pure delight which such an event would universally diffuse; but if there were danger of excesses from unbounded joy, those Roman Catholic noblemen and gentlemen who are implicated in the charge, will moderate the triumph, and guarantee the tranquillity of the country. The gallant Fingall will guarantee it. He stands before you, to pledge his high character for the conduct of his brethren. You know you may trust him; you know, that in the hour of danger, he lifted his sword, equally against the rebels of all persuasions; he despised false and perishable popularity; he proved his title to be received as a supporter of the throne, and he would not sully that title, and he never has sullied it, by any seditious or intemperate act.

May the God of truth and justice subdue your prejudices, awaken your consciences, and enlighten your minds to return that verdict which will tranquillize the country, unite the people, appal the enemy, and place these islands in a state of such proud defiance, that an enemy will never dare to pollute our shores.

Lord Chief Justice *Dowds*.—Does the traverser produce any evidence?

Mr. *Burne*.—My lords we beg a few moments for deliberation.

Lord Chief Justice.—Take your own time.

[After a few minutes,]

Mr. *Burne*.—My lord, I beg pardon for having delayed the Court. The counsel for Dr. Sheridan, after mature deliberation, are unanimously of opinion, that no evidence ought to be gone into, upon his part.

Mr. *Gould*.—We think, that the counsel for the crown have proved no case, either in law, or fact. Whenever the question at issue shall arise, it will be met most boldly.

Mr. *Solicitor General*.—My lords, it is my duty—

Mr. *Gould*.—My lords, on behalf of the traverser, I call upon the Court to disallow any claim on the part of the crown to reply. No evidence has been given by the defendant; there is no surprise, or any thing which can require observation from the counsel for the prosecution; and by a late case, even the personal right of the attorney-general, where he is the prosecutor, has been questioned. In the case of the *King v. lord Abingdon*,\* Lord Kenyon observed, that as the defendant had called no witness, he thought it irregular in the counsel for the prosecution to reply; and that though the attorney-general might be entitled to it, as a privilege, he thought no other counsel for the prosecution ought to have it; that he had never claimed it when holding an office under the crown, and that he would not make a precedent in a matter which he disapproved. In *Cox's case*, at the last commission, in Dublin, one of the counsel for the crown rose to reply, but was not admitted; and there is nothing particular in this case, to induce the Court to dispense with the general rule.

Mr. *Solicitor General*.—There is certainly nothing in this case to warrant a departure from any general rule. But it remains to be established, that there is such a general rule. In civil cases, the judges have lately established a rule, that where no evidence is given by a defendant, the counsel for the plaintiff cannot speak in reply. But that has not been extended to criminal cases; for in such, the crown is always allowed to have the last word. This is established by a very remarkable case—that of the unfortunate Mr. *Emmet*†; he made no defence; and yet Mr. Plunket, at the particular request of the then attorney-general, addressed the jury in reply.

Mr. *Driscoll*.—My lords, there was a case on the Leinster circuit, before Mr. Justice Osborne, in which he decided against the right. It was the case of the *King v. Tench*, at Wex-

ford; in which I stated the case for the traverser, upon whose behalf no evidence was adduced. The counsel for the prosecution insisted upon a right to reply, which the judge refused.

Mr. Justice *Osborne*.—The impression upon my mind is, that there is no reply, and so I decided. But I do not pretend to say, that I am absolutely right. I think, however, that if the crown has the right, there ought to be an authority to prove it. It must have occurred in some case or other before.

Mr. *O'Connell*.—My lord, there was a case upon the Munster circuit. One Mason was indicted for a misdemeanor, he gave no evidence, and I made the objection, that the counsel for the prosecution could not reply. Mr. Baron Smith, before whom the case was tried, hesitated, but said, he would consult with Mr. Justice Day, then in the other court, and it was decided by their lordships, that the objection was valid, and that no right of reply lay with the crown.

Mr. Justice *Day*.—That was my opinion.

Mr. *Attorney General*.—Perhaps the rule may have been made in ordinary cases, that the counsel for the prosecution have no right to reply, when evidence is not given for the defendant.—But in all cases, where the prosecution is by the attorney-general, the crown has the prerogative to reply, and that was admitted in lord Abingdon's case.

Mr. *Townshend*.—Before the case of the *King v. lord Abingdon*, the right of the attorney-general to reply was never questioned; and however it may have been ruled in some ordinary cases, lord Ellenborough has admitted an exception in favour of the attorney-general. So it has been the uniform practice in this country, which is sanctioned by the decision of the *King v. Emmet*; that case not only establishes the right of the attorney-general to reply, but that he may transfer his right to another.—In the absence of the attorney-general, he is represented by the solicitor-general.

Mr. *O'Connell*.—As the attorney-general has already stated the case, he cannot now appoint a delegate, under pretence of speaking to evidence.

Mr. *M'Nally*.—I cannot say what may be the modern practice of the Court of King's bench in England. But in the case of the *King*, at the prosecution of *Macklin v. Clark*, and others, lord Mansfield prevented Mr. Dunning from speaking in reply, as no evidence was given for the defendants. As to the case of Mr. *Emmet*, it was a case of high treason.—Mr. Burrowes, and I, were assigned counsel.—He prohibited us from speaking for him; so that the crown had two last words.—The attorney-general, Mr. O'Grady, stated the case, and Mr. Plunket replied, although no evidence was given by the prisoner, nor observation made by his counsel upon the

\* 1 Esp. N. P. c. 226.

† 7 How. Mod. St. Tr. 1157.

law, or the facts. Many well informed men thought at the time, it was an unnecessary proceeding, and should not be followed as a precedent.

*Lord Chief Justice.*—I have always considered it, as a settled rule, that the attorney-general, for the crown, had the last word.

*Mr. Perrin.*—My lords, I submit, that the case of the King v. Cox is precisely in point. It was a prosecution by indictment for a misdemeanor, instituted by the attorney-general, and was tried before lord Norbury, and baron George, at the Commission-court, last February. The attorney-general stated the case on behalf of the crown, and witnesses were examined in support of it. Mr. O'Connell stated the case for the traverser—no witnesses were called. Sergeant Moore rose to reply. The counsel for the defendant objected, and cited lord Abingdon's case. The court determined that the counsel for the crown had no right to reply in such a case, except the attorney-general himself.—That the right was personal, and could not be transferred. If the attorney-general thinks proper to exercise such a right here, let him do so; but we object to the solicitor-general being heard in his stead.

*Mr. O'Connell.*—My lords, I sent for Mr. Espinasse's book, and can now state lord Abingdon's case from it (which he did).

*Mr. Attorney General.*—My lords, every rule of this kind is made for the convenience of the Court, who may dispense with it, in any case of difficulty. In the present case, there has been much discussion upon matter of law.—My construction of the act of parliament has been denied, and we think it necessary to reply—at the same time, we have no objection, that the counsel for the traverser may be further heard, if they think proper.

*Mr. Justice Osborne.*—I should have thought, that a little research would have furnished a precedent to decide this matter.

*Mr. Justice Daly.*—I think the case of lord Abingdon is in favour of the reply. In common prosecutions—not instituted by the attorney-general—the counsel for the prosecution contended for a right to reply, which it seems was denied. But it was admitted, that the attorney-general has such right—that means, where he is the prosecutor. If there be such right, why confine it to him personally? If he appears as the prosecutor, and has the right of reply in him, I see no reason why he may not transfer it to another.

*Mr. Gould.*—My lord, this is not a prosecution by information, filed ex officio by the attorney-general—but by indictment.

*Mr. Justice Daly.*—I do not think that makes any difference. If the attorney-general appears as the prosecutor, I think it is sufficient.

*Mr. Attorney General.*—My lord, the objection made, would apply in cases of high treason, which are always by indictment, and the Court takes notice, whether the attorney-general prosecutes in his official character, or appears as counsel for an ordinary prosecutor.

*Mr. Justice Day.*—If we take it upon the authorities, they rather weigh against what is contended for by the attorney-general.

*Mr. Barton.*—My lords, what is it that lord Kenyon disapproved of? Why, the right claimed by the attorney-general—but when he was attorney-general, he did not exercise it.

*Mr. Justice Osborne.*—If it be the privilege of the attorney-general, as contradistinguished from the right of ordinary prosecutors, we might expect further authority to establish it.

*Lord Chief Justice.*—The notion which I have always entertained, is, that the attorney-general had the right of reply, but my brethren require stronger authority than the cases which have been mentioned.

*Mr. Justice Daly.*—I do not insist upon that.

*Mr. Solicitor General.*—My lords, we rely upon the case of Byrne, in 1798, and the case of Emmet, in 1803, both occurring at Special Commissions in this country, as deciding the right in favour of the reply.

*Mr. Driscoll.*—My lords, the cases, in which the privilege has been allowed to any other counsel than the attorney-general himself, were cases of *High Treason*, in which two counsel are assigned to the prisoner—one to state his case, and the other to speak to the evidence. If they choose, they may waive the right, but that cannot preclude the counsel for the crown from a reply. But the rule is different in the case of *Misdemeanor*. The counsel for the traverser has no right to speak to the evidence, after the evidence on both sides is closed. But if he gives no evidence on his part, the counsel for the crown cannot reply.

*Mr. Barton.*—Perhaps the attorney-general will render further discussion unnecessary, by waiving his claim.

*Mr. Attorney General.*—I cannot waive any privilege on the part of the crown. But have no objection that the rule, in such cases, be adhered to, what ever it be.

*Mr. Justice Osborne.*—As to the distinction between the cases of treason and misdemeanor, I do not see how it applies in this respect.—If there be any, it is *a fortiori* in favour of reply.

*Mr. Attorney General.*—My lord, so far as respects the case of misdemeanor, the right of reply was decided in the case of the King v.

Rhubb, and others. It was a prosecution against the proprietors of a paper, called "The Northern Star," for a libel, and the counsel for the crown were admitted to reply, though no evidence was given for the defendants.

Mr. *Bellew*.—My lords, although the court will not acknowledge any distinction between the cases of high treason and misdemeanor, yet we hope it will admit the similarity between cases, all of which are misdemeanors. In lord Abingdon's case, lord Kenyon doubted the right, but said, that if it did exist, he thought it bad in practice, and when he was attorney-general he never exercised it. In answer to this, the case of Emmet is relied upon, but that was a case of high treason—the former was a case of misdemeanor, and then comes the subsequent case of the King v. Cox, which was also a misdemeanor. The result then is, that Emmet's case, which is considered of sufficient weight to outbalance that of lord Abingdon, is over-ruled by the King v. Cox, which is not only a later case, but was a case of misdemeanor, like the present—and so was lord Abingdon's. Then taking precedent against precedent, the rule is, that the latter precedent shall prevail. But, my lords, give me leave to add a word, as to the justice of the case. What is it, that the crown is here contending for? The attorney-general opened the case, and must be supposed to have stated all that was necessary to support the prosecution. Mr. Burrowes, for the traverser, observed upon the case stated, and the evidence in support of it so far as it went. No new evidence was produced, and thus far, both parties are equal. What then, let me repeat—is it—that the gentlemen concerned for the crown are contending for? Why, for an advantage over the subject, by having two speeches against one. Is this a case in which such an advantage should be sought for?—As if the crown could not venture to meet the subject in the present prosecution, upon equal terms. Would it not be wiser, to adopt lord Kenyon's practice? And at all events, in a doubtful matter, to let the last authority decide.

Lord Chief Justice.—I have always considered it to be the right of the attorney-general, in every case where he is concerned in his official character, to have the reply. I do not think the observations of lord Kenyon binding in the present instance—although no evidence has been given on behalf of the traverser, abundant observations have been made, both upon the evidence, and the law of the case, and under such circumstances, where the right of the crown is insisted upon, I think it should be granted.

Mr. Justice Day.—It has been always considered, as a sort of maxim—that the attorney general has the reply, and I should have no doubt at all respecting the right, but for lord Abingdon's case, which alone shakes my opinion.

Mr. *Burton*.—My lords, we submit to the decision of the Court, that the attorney-general has the right of reply. But another question arises, whether that right can be extended, beyond the attorney-general himself?

Mr. Justice Osborne.—I have no doubt of that.

Mr. Justice Day.—There is no doubt at all, but that the right may be exercised by himself, or by the solicitor-general.

Mr. *Burton*.—My lords, you have decided two points against us; that the attorney-general has the right of reply, and that he may transfer it. We submit to these decisions—but there is still another question, which we hope the court will not decide against us—that is, whether another counsel may be heard for the traverser.

Mr. *Attorney General*.—My lords, so far from objecting, I suggested, long since, my acquiescence.

Lord Chief Justice.—In a case of this kind, there can be no objection on the part of the Court to hear the defendant's counsel.

Mr. *Goold*.—I will now submit to the good sense, and temper, and feeling of the counsel for the crown, whether they ought not to be satisfied with the privilege being conceded to them, and let the case go to the jury, upon the observations from the Court.

[This was not acceded to.]

Mr. *Goold*.—My lords, and gentlemen of the jury; I have the honour to appear as counsel for the traverser, doctor Sheridan, and in that capacity, I am about to address you, on the most important subject that has ever attracted judicial notice, or rivetted public attention. In the sincerity of my heart, I say it, I wish this great cause had at this moment found a more suitable advocate. I wish I could flatter myself, that any thing I have to offer, could merit a favourable reception. I can entertain no such notion, after the splendid exhibition we have just now witnessed;—an exhibition distinguished by the highest powers of intellect, and the purest sentiments of public virtue. It is but a few moments, since our understandings have been won, and our senses charmed, by a speech which will stand recorded as a monument of forensic excellence; persuading by its eloquence, convincing by its logic, fascinating by its beauty, and dazzling by its splendor. How can I hope to engage the ear, even of indulgent attention, when my best efforts can only serve as a foil by which contrasted superiority shines more bright, absorbing and engrossing the powers and principles of illumination. It is hazardous to touch a picture finished by the master hand of genius; it is doubly so, when every inch of the canvass is glowing with the beauty of a fresh performance. The jealous pretensions of the counsel for the crown have

produced an arrangement, sanctioned only by the indulgence and courtesy of the Court; an arrangement, as novel in principle, as it is inconvenient in practice; an arrangement by which, without the interposition of a single witness, the intervention of any evidence, or the addition of any topic, I am unexpectedly called upon to speak to this great question. I shall not shrink from the call, however painful, and irksome to myself; and while I despair of the powers of the advocate, let it not be imagined, I feel any alarm for the cause. It is the cause of truth, of justice, and of freedom! It pleads (as it were) for itself. It is oftentimes the pride and privilege of truth, to be its own sublimest—most successful advocate; and surely, no serious apprehensions can be entertained for the fate of a cause, in which so many wise men, so many good men—have taken so deep an interest; a cause, which the more it is examined, and the more nearly it is surveyed, is likely to enlist in its service every faculty of a well-regulated understanding, and every sympathy of a feeling heart—a cause, which has derived fresh vigour, as well from the hostility it has been encountering, as from the mode of warfare by which that hostility has been characterized. Is it not obvious to every man of the plainest understanding, that unexampled arrangement has been practised in the selection of the jury? Does a *fair* case require such management? How comes it, that out of the thirty-five persons who have appeared on the jury, twenty-three should have been challenged, without cause, by the crown? In the twenty three names is to be seen, as much intelligence, respectability, property, and integrity, as is to be found in this metropolis—men, known to their fellow citizens—men, in the daily habit of serving on special juries—men, whose recorded verdict would be likely to inspire respect, and give satisfaction—nine out of ten of those very men, Protestants—men of no party feelings, and of no party prejudices—men never suspected of any bias, but in favour of justice.—Astonished at such a proceeding, we have asked each other, what motives could have suggested—what principles can justify it? In vain shall we look for either the one or the other, amongst the fair and legitimate grounds of human conduct? no—we shall find the motive and the principle owing their birth to other far different causes—to a profane and interested expectation, that out of the great panel returned, a jury might be found, surrendering to prejudice; what was due to justice; and sacrificing truth upon the altar of bigotry and intolerance.—I call upon the jury, to be upon their guard against themselves; I call upon them to bear in mind the destination of their sacred duties. Good God! In what times are we living? Will posterity believe, that on a trial of such magnitude, and at a time when the rights of the people were supposed to be understood and allowed, the privilege of the crown, in challenging the jury,

had been exercised, not on any avowed principle of reason, but on a silent and sullen principle of arbitrary choice? I am not blaming the *fair* exercise of the just rights of the crown. Those very rights exist for the benefit of the people.—Nor am I anxious to canvass the weight of the reasons by which the most respectable of our fellow citizens have, in the face of the public, been deemed unfit to try so great a cause as this. But I am indignant, when I behold a paid, and placed, and pensioned minion of the castle, with his pen in one hand, and his list in the other, dictating (as it were) who should be the jurors to try a question so vitally important to the great body of the people. I am indignant, when I behold one of that very grand jury, who have found those very bills, profaning by his officious interference, the sacred temple of justice, violating all decency and decorum, and in the true and genuine spirit of prejudiced partizanship, assisting, yes, openly, and shamelessly assisting, in the disgraceful work of tutored selection. Who, now, can say that I was unwarranted in taking every practicable objection to a grand jury so constituted and organized? Will you not agree with me, that if in the outset, I had reason to suspect; I have now reason to complain?—This is not declamation—this is not the fruit of fancy or conjecture. It has passed in your presence, and within your view. Yes; these two stipendiaries of the crown, these pure and impartial magistrates and members of justice, have acted as I have described. What revenge will you take on them? Let your verdict be the record of *your honor*, and *their* discomfiture and disgrace.

*Lord Chief Justice.*—I am very sorry to interrupt you: but I do not see how you can apply your observations, except to matter which appeared in the cause. What you are now adverting to was not brought before the Court.

*Mr. Goold.*—My lord, it occurred in open Court.

*Mr. Justice Day.*—It is much to be lamented, that some suggestion was not made to the Court, at the time. We would have interfered to prevent any impropriety.

*Mr. Mac Nally.*—My lords, I apprized Mr. Lindsay, at the very time, of his conduct being improper and indecorous; and I asked him, how he dared, after having, as a grand juror, found the bills against the traverser, come down to suggest challenges on behalf of the crown.

*Mr. Goold.*—My lords, I hope, I am as little capable, as any man, of intentionally deviating from the strict line of my duty. I do conceive I have a right to call the attention of the jury to a transaction, that passed notoriously within their view. If the Court are pleased to stop me in what I conceive the just exercise of

my right, I shall sit down, and let the solicitor-general proceed.

*Lord Chief Justice.*—You had better proceed, Mr. Gould.

*Mr. Gould.*—I think, I hear it whispered, that inflammatory topics are not fit for this place. It is always painful (on a great occasion more especially) to speak of one's self. But I know the pains that are always taken by the underlings of power, to misconstrue, and to calumniate. The same falsehood and fabrication that impute disloyalty to a cause, is but too sure to attribute inflammatory speeches to the advocate. I had hoped, that the Court would not, by its interruption, have given any asylum to interested, and unfounded insinuation. I had hoped, that it had not been forgotten, that when the youth of these countries were fascinated by doctrines of the French revolution, I endeavoured to stop its contagion. I did so, in a way, that if not useful to my country, was at least of value to myself, since it attracted to me the notice of the first of human beings, and procured for me the friendship of the most splendid advocate the cause of loyalty ever recorded, or ever will record. He too was an Irishman.—He is no more. But yet he lives in the heart of every man to whom law and liberty and country are dear. Pardon, my lords, this digression.

Gentlemen.—The indictment, now under your consideration, contains two counts. The first in substance charges, that in the month of July last, divers persons assembled at Fishamble-street, with a view and intention of causing and procuring the appointment of a committee of Roman Catholics, to exercise an authority to represent the Roman Catholic inhabitants of Ireland, under pretence of causing petitions to both Houses of Parliament to be framed for the repeal of the penal laws; and that a resolution was then and there entered into, for the formation and appointment of such committees, as is described in the indictment; and that the traverser, in pursuance and furtherance of such resolution, did, on the 31st of July last, assist in the election of Mr. Thomas Kirwan, to be a representative for Mary's parish in said committee.

The second count takes no notice of the proceedings on the ninth of July in Fishamble-street, and merely charges the traverser with having, on the 31st of July last, assisted in the election of Mr. Thomas Kirwan, as a representative for St. Mary's parish, in a general committee thereafter to be holden. The indictment has been found, as you have already heard, upon an act of parliament passed in the year 1793, and commonly called the Convention act. In order to sustain this indictment, we, as counsel for doctor Sheridan, say, that the Catholic committee should, by evidence, appear to be an assembly, elected, appointed, or assuming or exercising a right to represent the Roman Catholics of Ireland, under pretence, and not for the purpose, of framing a

petition to both Houses of Parliament; while on the other hand, the attorney-general has broadly, and boldly, laid it down, that any assembly, whether great or small, elected, or appointed to represent, or exercising a right to represent, any portion of the inhabitants, whether great or small, for the purpose of framing a petition to parliament, is an unlawful assembly. The position, he pledged himself he would demonstrate; sure I am, that a proposition so general and unqualified, should be demonstrated, before it should be adopted.

The attorney-general has not adverted to any distinction between general representation and restricted delegation. He has assumed, that the Catholic committee, resolved upon by the resolution of the 9th July, was, and is a representative assembly.—Now, the first observation that strikes an impartial observer upon this part of the case, is, that no evidence whatsoever has been given of such committee having ever met, or having done any act whatsoever, from which a representative character might be fairly inferred. It is not too much, therefore, to say, that the illegality of such an assembly can, in the present instance, be collected only from the terms of the resolution, by which such committee was originally elected or appointed.—The attorney-general has drawn his inference from the terms of the resolution, that the Catholic committee is a representative assembly; and finding the word "PRETENCE" in the statute, he says, that pretence in the statute means assumption, or claim, or in other words, means purpose.—This construction of the word pretence, the attorney-general says, is manifest from the object the act had in view; from the saving, or exception contained in the first section of the act; from the absurdities which, he contends, would follow from any other construction of the word; and lastly, from analogous construction, or analogous cases.—The object of the act, he contends, is, to prevent an illegal assembly from meeting; and this object, he says, is apparent from several clauses in it, by one of which, the magistrates are directed to disperse such a meeting, and by the other, any person giving notice of the election, or assisting therein, is declared to be guilty of a high misdemeanor.—It is triumphantly asserted, that those two clauses would lead to manifest absurdity, if the word pretence meant any thing else than purpose:—Are the magistrates to wait until some act be done, by which the character of illegality could be inferred?—Can no bill of indictment be preferred against an elector, until the assembly comport itself in such a way as to demonstrate, that petition was a false pretence, and not a real purpose?—With respect to the first of these clauses, and the observations made upon it, I say, that there is no hardship, nor inconvenience, in obliging magisterial authority to act upon magisterial responsibility. If a magistrate receive information, that a certain assembly was elected, as a pure representative assembly, for attestation of matters established by law, or that

it assumed a pure *representative* character, purporting to bind by its own acts, and in its own name, those by whom it was elected, or constituted; I say, in such a case, the magistrate is not only warranted, but bound to disperse such a meeting, before it does any act whatever; and surely the terms of its incorporation, as well as the professed objects of its meeting are evidence of illegality in its formation, or original constitution, and every act it does is clearly evidence also of its false pretence, or covered purpose. But if this argument of alleged inconvenience is to have the weight sought for, on the construction of an act of parliament, it must be recollected, that each party is equally entitled to the benefit of such an argument.—Will any man gravely contend, that inconvenience, and serious and dreadful inconvenience, may not result from an unlimited authority, and direction, to disperse every meeting constituted by delegation, whether great or small, however peaceable its intention, and lawful its object or purpose? I really think, it only requires a mere statement of the proposition, to interest in our behalf, a people, thinking, sober, moral, just, and feeling, for such is the British people.—What will they say, when they hear it contended for, that every committee, consisting only of a small number of persons, for the sole and exclusive object of petitioning parliament, is an illegal assembly, liable to be dispersed, its members liable to arrestation, and the electors, who constituted it, guilty of a high misdemeanor?—Then every committee appointed to prepare a petition to parliament, for the sole purpose of preventing or repealing a revenue law, is, according to the argument contended for, an unlawful assembly. That such committees are not unlawful assemblies in Great Britain is notorious. It is every day's practice, to elect and appoint such committees. The great interests of commerce and trade require it.

With respect to the second clause, and the observations upon it, it is to be observed, that on this very section or clause is the traverser indicted—he is accused at the bar of a court of criminal justice, for having assisted in the election of an illegal assembly; and before that assembly has either met or otherwise acted. The counsel for the crown contend that this indictment is maintainable before the assembly meets, or does any other act whatsoever. I do not dispute the proposition. The original formation, or constituency of any assembly may be in itself illegal; the terms by which it is embedded is evidence, not only of original illegality in the formation, but it is also evidence of the pretence, and not purpose, for which it is elected or appointed. If any assembly, for alteration of matters established by law, be purely *representative* in its formation, it takes a character of legislation which is incompatible with our laws; any man, who votes for a member of such an assembly is guilty of a misdemeanor; and

such an assembly never can have petition as a purpose, but as a *false pretence*.

According to my view, therefore, every assembly elected, constituted, or appointed, for alteration of matters established by law, that is in itself a pure representative body, binding by its acts, and, in its own name unamenable to the constituent body, is an unlawful assembly in its very formation: and again, I take it that any assembly, although not *representative*, but merely delegated for a particular purpose, may be an illegal assembly by its acts, and cannot screen itself from the penalties of illegality by a *false pretence*; every act of such an assembly is evidence, to go to a jury, that petitioning was a *pretence* and not a purpose. Now, with respect to the saving or exception contained in the first clause, it is relied on, that unless *pretence* is the statute means purpose, this saving or exception was unnecessary; in order to build the argument, the attorney-general has given a grammatical construction, which, in my judgment, is neither called for nor warranted. The words are, that all "*assemblies, &c. &c. under pretence of petitioning for, or in any other manner procuring an alteration of matters established by law,*" &c. "*save and except the knights, citizens, and burgesses,*" &c. &c. are unlawful assemblies. The attorney-general says that the sentences should run thus, viz. "*Under pretence of petitioning for,*" or "*under pretence of in any other manner procuring an alteration,*" &c. &c. by this construction it is, that the attorney-general introduces the words "*under pretence of*" before the last branch of the proposition, and contends, that to make sense of that proposition, these words "*under pretence of*" should be understood; and then, he says, that such being the case, the consequence would be, that the word "*pretence,*" according to our construction, would mean false pretence in one sentence, while, in the very next, it would mean real purpose. This argument would deserve weight, if the construction relied on were absolutely necessary to the understanding of the statute. But, surely, any one who reads the act with attention, will immediately see that it is not necessary to introduce the words "*under pretence of*" before the words "*in any other manner procuring,*" &c. On the contrary, it seems that the obvious construction by which the saving or exception is introduced, is this, "*all assemblies, &c. &c. procuring an alteration in matters established by law, either under pretence of petitioning, or in any other manner,*" are unlawful assemblies. There are many other ways of "*procuring alteration in matters established,*" &c. than by petition or pretence of petition. The assumption or exercise of legislative functions, the open menace, the undisguised defiance; therefore, to withdraw the House of Commons from the scope of the enactment, it is to be considered whether the words were large enough to embrace it; it was purely a repre-



sentative body, it did really procure alteration in matters established by law, and coming within the very terms of the enactment, it was deemed expedient to except it by express words: but see what the force of this exception is on the other side of the question: the act, in express terms, points to assemblies purely representative, its words are sufficient to embrace the House of Commons; it contains an express saving, or exception for it, and does, therefore, furnish an argument that general representation, and not restricted delegation, was the mischief which it intended to guard against.

The attorney-general also contends for his construction of the word *pretence*, upon the authority of analogous interpretation, and, for this purpose, he has cited and relied on three acts of parliament—32 Hen. 8, in England, 13 Car. 2, and 26 Geo. 3. The 32 Hen. 8 is an act against maintenance, and how the words “*pretensed titles*” in that statute can illustrate the words “*under pretence*” in the 32 Geo. 3, I own, I cannot conceive: according to the literal interpretation of the words in 32 Hen. 8, those words mean *claim*, whether true or false:—*pretension is claim*, true or false, and the act would be clearly absurd and inoperative, if, while providing against the sale of titles, unless clothed with some symbol of possession, it held out the power of trying in a criminal court all the intricacies and niceties of civil titles. As to the 26 Geo. 3, which adds to the words “*pretence*” also the word “*false*,” I own I cannot see any great accession which the attorney-general’s argument derives from that statute. The statute says if any person “*by false pretences obtain, &c.*” now, this word *pretence* stands alone in the sentence; it is not coupled with, or referable to any particular act or acts to be done, or performed, as in the case now before us. If the word *false* were not added, the clause would stand thus: if any person, by pretence or pretences, obtain money, &c., such a clause at first sight would suggest some insufficiency, particularly in the criminal law; but if the statute had said that, if any person, under “*pretence*” of doing some particular act, “*obtain money, &c.*,” I think it would strike any lawyer that the insertion of the word *false*, in such a case, would not be considered necessary to constitute the crime; at all events, the addition of the word may well be considered as one of those instances in which the legislature has thought fit to proceed upon a principle of abundant caution, leaving nothing to caprice or conjecture, in the administration of criminal justice. The 13 Car. 2, c. 5, is certainly more analogous to the present statute than either of the other two acts on which I have observed, and of course deserves more serious consideration: there is, however, in my judgment, sufficient ground to contend that the word *pretence* in the statute 13 Car. 2 means *false pretence*. To the delivery of a petition it is not necessary that there should

be a greater number than is sufficient to carry it, and deliver it; any excess above that number, therefore, being unnecessary, is of course not a real purpose, but a false pretence; and our argument, so far from being weakened, gains additional force from an instance, in which the word “*pretence*” alone, must, from the very nature of the case, mean false pretence, and not real purpose.

If, in the observations I have made upon the arguments of the attorney-general, I have repeated what has been already said; if I have adverted to topics, which have been much more ably stated and enforced, I trust I shall stand in some manner excused by the importance of the subject, and the value of the stake, which seems in issue between the parties: that stake, in my judgment, is nothing less than the right to PETITION; a right common to Protestant or to Catholic; a right which becomes exposed to annihilation the moment it is stripped of any of those safe-guards by which it has been for so many centuries surrounded and protected;—the right, I say, is in the greatest danger when a proviso, inserted for its protection, is openly stated as a neutral clause, introduced to gratify an unmeaning feeling of popularity; when it is further stated, that such a clause loses all its weight from the order in which it finds its way into the statute:—I hope I shall stand further excused when I call to the recollection of the Court those fundamental rules of construction which have invariably prevailed, and, without which, law would be a symptom of caprice, and not of principles. In the consideration of all statutes, the first and most important rule is, to give such a construction as is best calculated to repress the mischief and advance the remedy. 2ndly, The statute must be taken all together, and nothing shall be deemed surplusage which can have an efficient sensible meaning. And, 3rdly, In the criminal code of this country, nothing is better settled than this, that no construction shall be made whereby a crime is spelled out by conjecture and intendment, or by any thing short of plain, positive words.

In order to ascertain the mischief, as well as the remedy, one is naturally led to consider the nature of the times in which the act passed, as well as the particular occasion which gave birth to the act. This statute was introduced into the House of Commons in the year 1793. It was presented at a moment when French principles had made great progress, and given dangerous impressions to the minds of the people; at a season when those very principles had assumed an air of so much body and consistency as to alarm all moderate men for the fate of our common country and our common constitution; when the press openly proclaimed corruption, incompetence, and incorrigibility in our system; when Paine was regarded as a missionary, and the Age of Reason was read as a creed: when, under the pretence of parliamentary reform, parliament-

ary annihilation was intended; when, in the spirit of professed imitation, a national assembly had been actually convoked—an assembly, without cover or disguise, assuming the rights and executing the powers of legislation—an assembly, in its very organization, threatening to supersede both Houses of Parliament in their privileges and in their functions. Such were the times, and such was the occasion that produced the act of 1793, called the Convention Act, an act which, in its genuine spirit, and its letter, bears every mark and feature of a *declaratory law*. It makes use of the word “*declare*,” and, in speaking of those assemblies against which it points, it uses the word “*are*”—illegal assemblies. There was at the time a pre-existing evil—there was a *representative* assembly, that, under a *pretence*, was masking a purpose. The principles of the common law were sufficient to put down the mischief in ordinary times; but it has been frequently deemed expedient to enact (as it were) a legislative recognition of the common law. In this very year, 1793, did the Catholic committee meet, and meet almost daily; it was very numerous; it had a chairman; its proceedings were not a secret; they were published in all the daily prints. Some of its leading members had constant interviews and communications, not only with individual members of parliament, but with the executive government itself.

Mr. Richard Burke, as the professed agent of the Catholic body, attended the meetings of the committee.—But it was a committee of restricted delegation, for the sole purpose of petitioning, and not a representative body, under pretence of petitioning. That very committee has been, at intervals, sitting ever since, and long before; and yet, until this day, we do not find any charge made against it.—Since the year 1793—a period of near nineteen years—we do not find a single bill of indictment, either formed or preferred, upon this Convention act; and during that period, this very Catholic committee was in the habit of seeing in the seat of power, men characterised by an almost instinctive hatred of the Catholic cause, and peculiarly distinguished by the violence of their counsels, the illiberality of their principles, and the inveteracy of their habits.—Yet, against this same Catholic committee, sitting and acting in the full glare of day, did no proceeding emanate, even from such men. Until the close of the year 1811, was the Convention act suffered to remain in drowsy obscurity, and then brought forth, in order to exasperate public feeling—to invade a public right, and to innuptate an entire population.

Let us now look to the proviso which has been treated with so much lenity by his majesty's attorney-general. I beg leave to say, that you, my lords, have no right to reject the proviso, if, in looking into the entire act, you can give to it an efficient sensible meaning. At the common law, did there exist a right to petition, by delegation?—Most assuredly there

did, and does now exist, openly and unreservedly in Great Britain. This act of parliament does not touch, or affect to touch, by any of its provisions, the *abstract right* to petition; but by some construction it might affect a pre-existing right to petition by delegation. What are the words of this clause: “Provided that nothing herein contained shall be construed to prevent or impede the undoubted right to petition.” Can any thing be stronger than the words used? You shall not even *construe* the act, so as to prevent or impede the right to petition. This clause legalizes facilities, and denounces preventions and impediments. The only right which the act could, by any intendment, affect, is a right to petition by delegation. If that right be touched, impediment is *pro tanto* created; but a right is expressly saved, and that right can only be a right to petition by delegation.

I take leave, again to say, that this act of 1793 is a declaratory law. If such be the case, it constitutes no crime that was not known to the common law. But suppose, for argument sake, that it purported to enact a new crime—Well then, I boldly affirm, that it is a profanation of the British law, and a libel on the British constitution, to assert, that conjecture may make culprits, and that crimes may be got at through the avenues of forced construction and ingenious interpretation. The criminal code of every country should bear those broad and glaring characters, that every man who runs may read.—Above all, never let it be heard in a court of British justice, and in the hearing of a British jury, that a proceeding, which violates no moral duty, and hurts no moral instinct—a proceeding, suggested by the purest principles, and sanctified by the purest motives, shall, by the torture of construction, be the foundation of crime and the source of punishment.—Upon such a theme as this, I can call upon the sympathies, as the legitimate auxiliaries of the understanding. I implore the jury, upon a feeling of common interest, as well as common justice, to pause before they find a verdict which may affect the grandest and proudest of our rights and privileges. That right by which the people of a free country, without periphrasis, subterfuge, or evasions, state a grievance and implore a remedy, a right, not the less haughty because its posture is humble; a right, dreaded by despotism, and courted by freedom; a right, in its exercise unencumbered by forms, and unattended with danger; a right forced from reluctant power, by valour and by sacrifice—maintained and cherished in the very bosom of liberty—a right, congenial to the feelings of every human being, whatever his colour or his creed—a right interwoven with the elements of our nature and the principles of our faith—a right, which rescues hope from the regions of despair, and sheds a glimmer upon the dark recesses of prostrate calamity, and the gloomy dungeon of prostrate crime. To invade this right; to impede its exercise, or circumscribe

its operation, is to turn traitors against ourselves; to wage impious war against the first principles of divinity, and to arraign the ordinances of the great God himself.

Gentlemen of the jury, there is something peculiarly novel in the conduct of this cause. If a committee *delegated* for the sole purpose of petitioning, be an illegal assembly; why have not the counsel for the crown so put the charge upon the face of the record? Has the attorney-general himself been satisfied with treating the question in such a way? If the mere act of delegation for the purpose of petitioning be criminal, what more was necessary than to make the simple statement, and prove the simple fact? Recollect the speech of the right honourable gentleman; recollect, that at the very moment he was insisting, that the word "*pretence*" in the statute meant purpose, he himself was using the identical self-same word in his speech, in a sense diametrically opposite. Recollect the whole scope and tenor of that speech, by which this great cause was first presented to your notice. In every line of it is contained an insinuation, a deep and grievous insinuation against the Catholic committee. That speech, from first to last, breathes suspicion of the motives and objects of that committee. If delegation for petitioning be unlawful, why have we heard so much of revolutionary doctrine, treasonable practices, seditious and inflammatory speeches? If delegation for the purpose of petitioning be unlawful, why have we heard so much of Protestant moderation and Catholic turbulence; why so much of Protestant generosity and Catholic ingratitude? If delegation for petitioning be illegal, why have we heard it distinctly charged upon that committee, that petitioning was a false pretence and not a real purpose? Why have we heard it repeated over and over again, that any man who could read and write could frame the Catholic petition? Such assertions, stated from such high authority cannot be regarded as the giddy redundancies of exuberant declamation. If they were necessary to have been stated, they ought to have been proved. Has a scintilla of evidence been offered, to show the character of that committee such as it has been represented? On the contrary, from every thing that has happened here (and give me leave to say from every thing which could fairly have appeared elsewhere) the sole and exclusive object of that committee was petition. Is the attorney-general really in earnest when he says, that any man who can read and write could frame the Catholic petition? Let me tell the right hon. gentleman, that to instruct the mind of habitual ignorance, to correct the mind of habitual error, to remstate reason on the throne usurped by folly, to enrich liberality by the sacrifice of habitual prejudice—is not the work of a single day nor of a single individual. When was it ever heard of, that selfish bigotry yielded to the first suggestion of reason, or was illuminated by the first flashes of con-

viction? When was it ever heard of, that the strong holds of intolerance were taken by a first assault? Are we living in a country and in an age in which the bad passions of our nature have lost all their influence? In which talent and integrity are the only passports to power? Has there been no instance, in which moderate capacity has been raised to immoderate greatness upon the shoulders of religious persecution? Hopeless would be the fate of this great cause, if it stood upon the inactive excellencies of its own intrinsic merit. To insure its ultimate success, there must be the co-operation of many minds, and many hands, and many hearts. It is the character of this great cause, that disaster begets effort, and defeat is the parent of resource. "Any man who can read and write might frame the Catholic petition?" No, I fear this great cause will not succeed, until the voice of *individual* reason and of individual eloquence, grow into the full swell of national chorus.

Gentlemen of the jury, it has been more than insinuated, that the great body of the people feel no interest in the success of a petition which throws open only to a few the avenues to political power and consequence. However such a topic might suit another meridian, it certainly was not fit for this place. When I look around me and behold such a body of talent among the Catholic youth, when I contemplate genius herself drooping under the weight of those disgraceful fetters which have chained her within the narrow periphery of a contracted circle—when I consider, by what base means, and for what base ends, her pinions have been clipped, and her flights impeded—when I consider all this, I say, the penal code appears a system of impious incapacities. When I call to mind how often genius born in peasants has graced these rows, and ornamented that bench; when I bring to remembrance the various instances, in which the very lowest of the people have been wafted on the pinions of native talent to the highest summits of human greatness; I say Catholic emancipation is an object of universal interest and universal anxiety. Yes, the Catholic peasant has a right to the comfort and consolation even of fancied greatness. He has a right to the sweet hope, that one day or other his son, or some of his posterity may make a name, and create a family. He has a right to feel, that genius and virtue can lift poverty and obscurity to the highest pinnacles of British greatness; and that man is most illustrious, who at the end of his career, leaves the distance between his lowly origin, and his high ascent, one continued track of splendid glory and illumination.

If we have had reason to be dissatisfied with the construction of an act of parliament, which goes to contract the powers, and impede the means of petitioning; a construction, which would include limited *delegation* for the purpose of petitioning; within the words of an act, which makes *representation* under pretence of

petitioning illegal, we have no less reason to complain of certain charges made upon the Catholic body, and unsupported by a *scintilla* of evidence. The attorney-general has endeavoured to impress on your minds, that treason and sedition exist in the Catholic body.

*Mr. Attorney General.*—I beg Mr. Goold's pardon; I entreat he will be so good, as not to misrepresent me. What I said as to treason and sedition, I did not apply to the Catholic body, I never meant to impute treason and sedition to the Catholic body.

*Mr. Goold.*—I certainly must have misunderstood my right hon. friend, and I am sure, I have done him kindness, in thus giving him an opportunity of explanation. But after all, where is this treason and sedition? It has been too much the order of the day, to cry down our national loyalty. It has been the privilege of every mercenary ruffian to degrade the character of Ireland. Where, I say, is this treason and sedition? It is for ever quivering on the livid lips of a disgusting animal, who owes his existence to the fever of bad times—a creature sprung from the womb of public disorder, nursed upon the bosom of public calamity, and ripened into maturity by the tainted air of public disgrace—a creature, who is something when the country is nothing—who is nothing, when the country is something.—Alas! how melancholy, that much of our national character should be taken from hired defamers, and their miscreant misrepresentation! I am glad I have given the attorney-general the opportunity of doing justice to the Catholic body. Their loyalty stands in no need of my feeble attestation. It has been proved by a century of suffering and resignation. It has stood the test of many a severe trial. It has been marked by modest meekness, and peaceable demeanor. It has been characterized by no presumption—unless, to approach with humble petition the foot of the throne, or the vestibule of parliament, be presumption.

Gentlemen of the jury, I have endeavoured to shew you, that upon the true construction of the statute, the Catholic committee is not such an assembly as the act declares illegal—that it is not *representative*,—and that petitioning is not a *preference*. But supposing our view of the statute erroneous; yet you have no evidence on which to convict the traverser. I beseech you to banish from your minds, the recollection of any calumny by which the bad part of the press of this city may have influenced you. Be unprejudiced—come to the consideration of this question, with minds like blank paper, spotless and uncontaminated.

With respect to the evidence of Mr. Hudleston—what has he said? He has given you an account of a meeting, and his observations upon it—but Doctor Sheridan was not there. What becomes then of all that detail of facts, which happened in his absence? Is he to be bound by resolutions, to which he

never assented? Is he to be bound not only by the resolutions of an assembly, which he never attended; but by the resolutions springing from the memory of a man, who lost his notes? By the memorandums of transactions, which the witness never looked for and therefore could not find? Upon the testimony of a man, who refreshes his memory of a transaction in July, by a letter written in the March preceding? God forbid, that honour and liberty should be sacrificed by such testimony as this.

With respect to the evidence of the two first witnesses, namely Sheppard and M'Donough, I have very little to offer. If they are entitled to credit, it appears, that the meeting on the 31st of July at Liffey-street, was most respectably attended, and most decorously conducted. It appears, that petitioning was the object, and the only object. But one of the witnesses mentioned something of the word *represent*—and on being closely interrogated, he could not swear whether it was *present*, or *represent*. No doubt you have observed, with what anxiety the Court, on this day, examined one of the witnesses. The Court was enabled to see those informations, on which the indictment is framed, and, I think, from the tenor of the examination, it pretty clearly appears, that the informations, and the evidence are not consistent. But there is one remarkable circumstance, as it regards the evidence in this case.—It appears, that the three witnesses took notes of what passed at the time.—It appears that two of those witnesses were expressly sent, for the purpose of being witnesses for this trial—And yet, strange to say, not a single memorandum has been produced.—They have all been lost, although they were carefully looked up! All this is for you—Have you a doubt, that there has been tutoring in this case? I mean no insinuation against the eminent counsel who have conducted this cause. They are incapable of any indirect proceeding.—The underlings of power have been mixing themselves in this business,—In the anticipated conviction of Doctor Sheridan, they already see the fruit of interested zeal, and unprincipled interference.—They fancy, they can see promotion in the success of cunning, and the triumph of artifice. Truth may be sometimes jostled by such pitiful adversaries—but in a great cause, on a great public occasion—it cannot be vanquished by them.—*Magna est veritas et prevalebit.*

In instituting this prosecution, the administration of the day have undertaken a gratuitous crusade against the feelings of the country—without an adequate object, or end, it has created much risque—it has been stated, that the Catholic committee was the focus of inflammatory debates, and seditious speeches—if such was the case, give me leave to ask, was not the strong arm of the law sufficient to punish individual delinquency, without annihilating public right?—If in the exercise of the most valuable of our privileges, we find some

errors, let it be recollected, that no human institution is perfect—no good without its attendant evil—such errors are peculiarly inseparable from a free constitution.—They are excrescences which grow on the smooth surface of beauty—cursed be the hand, that would attempt to remove them, at the expense of life itself.

I again assert it, the administration have undertaken a gratuitous crusade against the feelings of our people. They have also thrown upon the Court, and upon you, a most painful duty. They insist upon the Court constraining *prudence*, *purpose*, and call upon you, to convict a worthy man, upon such a construction. They have done all this, without any apparent necessity to warrant so monstrous a proceeding. Wisdom, as well as justice would have suggested a far other, and different mode of conduct. The minister might have gone to parliament, with the statute in one hand, and his impeachment of the Catholic committee in the other. He might have had a legislative reading and construction of the word *pretence*; if his argument was strong enough for the purpose. He might also have found an opposition sturdy and victorious. He might have learned that his construction could not be palatable to a people, jealous of their rights—a people of plain, unsophisticated understanding—a people, who might feel disgusted, and alarmed at a proceeding which creates a crime through the medium of false logic, and forced interpretation—this proceeding may be the parent of much trouble. If an orderly, and peaceable mode of petition, be prevented, the Catholics must resort to other methods—aggregate meetings, adjourned aggregate meetings, in every district, and in every county in Ireland. Depend upon it, the Catholics will never give up the abstract right to petition. They have great objects to gain—to gain by petition—by universal petition. Recollect one memorable occasion, in which the child and champion of ascendancy, reviled their petition, because it appeared to be the petition of only nineteen counties. In every point of view, this proceeding seems as little sanctioned by policy as by justice.

Gentlemen of the jury, the entire of this proceeding has been characterized by peculiar wantonness and infelicity. The administration of the day have shown but little judgment in the selection of their victims. They have brought to the bar of a court of criminal justice, one of the most reputable of our fellow-citizens; a man of letters, a man of studious habits, and peaceful pursuits; a man admired for his talents, and beloved for his goodness, a man whose very *name* is propitious to the cause of liberty. Yes; he does bear a name, that is Ireland's boast, and Ireland's pride; a name connected with the legitimate vanities of our country; a name that uninfluenced by power; unseduced by false popularity; unenriched by corruption; unsubdued by poverty, and unappalled by misfortune, has kept the even

and steady tenor of its way, and has borne once, the best prop of the monarch's just prerogative, and the invincible champion of the rights and liberties of the people. Yes; he does bear a name, that brings to mind every thing that is sound in principle, transcendent in genius, and fascinating in fancy. Look, gentlemen, at that respectable, and venerable man—behold the sweet composure that sits on his brow, at a moment, when the throbb of public anxiety beats so quick and so high. Upon the charge and upon the evidence convict such a man, if you can. Deprive him of liberty, and his ten children of bread—his body you may confine—and in that confinement, he can appeal from your sentence. He can arraign it before the majestic tribunal of a clear conscience. Yes; there is an heroic innocence, as well as heroic valour, that courts captivity; smiles at torture—that rises man above the weakness of his nature, and makes a feeble frame the habitation of a godlike soul. That lifts prostrate worth beyond the reach of sublimary terror. That blunts the sharp edge of tyranny, and disarms the bloody hand of oppression; that cheers—consoles—fortifies and elevates the incarcerated victim; and converts the gloomy walls of a dungeon into the splendid theatre of his glory.

Never have we witnessed a cause so important—so interesting. It assuredly is the only cause within my memory, in which a jury has been so identified with the constitution, as to make its recorded verdict a source of public felicity, or of public misfortune. Every thing contributes to heighten the grandeur and solemnity of the scene. Many people think, that the success of the Catholic question is more or less connected with the proceedings of this day. Sure I am, that this cause touches nearly the grandest of our rights and privileges—the cause derives no small interest from the character of the suitors. The administration of the day on the one hand, the people of Ireland on the other. When I reflect upon the events that have passed, and are passing at the great theatre of the world; when I call to mind the fatal and disastrous consequences, that have followed from a paraded contempt of public opinion. When I contemplate those awful vicissitudes, which have annihilated, at a moment, the most ancient and venerable systems.—When I look up at that frightful eminence, from whence an ambitious and unprincipled usurper is enabled to survey the almost prostrate liberties of the world; from which he can in safety gaze with ferocious delight on those splendid ruins which he has scattered around him, the monuments (as it were) of so much greatness, and so much folly. When, above all, I behold the venerable fabric of the British constitution, standing graceful and erect, amidst such a pile of dissolution; I cannot help feeling the most trembling anxiety, lest the rude assaults of power, on the one hand, or of licentiousness on the other, should endanger the only remaining asylum for exiled virtue, and exiled freedom.

Let us not deceive ourselves—we are threatened by no common adversary: if we be wise, we may defy him. Against such an antagonist, and against such fearful odds, the mechanism of defence is every thing short of defeat—against such a man, you must enlist the heart, as well as the hand of Ireland. Yes; you must employ that spirit of war, which is engendered by a defence of equal liberties and equal rights. You must draw forth that spring and energy of the soul, which is the exclusive growth of freedom's soil—which braces the boyish arm of beardless youth, and renovates the decrepitude of old age—which furnishes the ready weapons of invincible defence—which makes every inch of your invaded territory a scene of valour, or a theatre of exploit—which makes every hillock a rampart, every rustic an engineer, every ditch a fortification, and every peasant a hero—which rushes into the field, dauntless of danger, and fearless of numbers—which marches to no step, but the step of conquest—and hears no shouts, but the shouts of victory. Yes, let us have a system, which animates alike high and low, rich and poor, strong and feeble, old and young, in the defence of our common country and common constitution. Let the Catholic have what by nature he is entitled unto. Let the right to petition be free and unimpeded. Let the trial by jury be regarded as the sanctuary of our laws and liberties. The tyrant may frown, despotism may threaten, while the united and cordial sons of freedom can smile with all the composure of perfect security, and certain success.

#### REPLY.

*Mr. Solicitor General.*—Gentlemen of the Jury;—I offer myself to your attention, with very little hopes of engaging it. You have witnessed such splendid displays of eloquence; so many enthusiastic appeals have been made to your passions; you have been dazzled by light, and so heated by fire, that I must, at least, wait until the temperature of your minds shall have cooled. I must allow you to recover from the intoxication of your feelings, or I must despair of making any impression by an address, in which it is my determination, to confine myself exclusively to the only two topics, which seem to have been forgotten this day; at least they seem to have been thought of comparative insignificance, the law and the facts of the case now before you.

It is not my inclination, or my duty, and I disclaim the right, to address you upon any of those popular topics, which have been so laboriously, and passionately urged by the traverser's counsel; I recollect the place in which I stand; I know, that I am in a court of justice, and not in a house of parliament. I shall not stop to inquire, how far those gentlemen may have abused that latitude of discussion, which is permitted to those who defend an accused man. I wish not to abridge the fair exercise

of such a privilege, although I may be allowed to observe, that it has been indulged in this day, without stint, and carried to its utmost limits. Be that as it may, a colder duty devolves upon me—I prosecute the man, whom they defend, and God forbid, that in doing so, I should appeal to any thing, but your understandings; or, if I had the talent of perverting your minds, through the medium of your prejudices, that I should avail myself of such a power, in the prosecution of the individual now upon trial, or any other man. You will give me credit for the wish to discharge my duty, and not to transgress it; and I am not willing to impute to you a different intention. I am sure that it is unnecessary to remind you, that you are not impelled to decide upon those great political and constitutional questions, which have been so much agitated this day; that you are not *legislators*, but *jurors*; and that your oaths bind you to a fair verdict, between the crown and the traverser. But it has become necessary to observe upon the confusion of jurisdiction, which has been contended for this day; and the very unfair attempts which have been made, to induce you to usurp the authority of the Court. Your exclusive province is, to decide upon the facts in controversy between the parties; instead of which, you have been clamorously called upon to interpret the laws of the land. The mummery of sending up into a jury-box a dozen copies of an act of parliament, has been resorted to, and you have been called upon to decide upon its policy, as if you were *senators*, and to construe its enactments as if you were *lawyers*. You have been told, that its provisions are difficult of interpretation, that learned counsel have differed upon them; and it has been objected to the Convention law, that it requires professional subtleties to expound it; and yet the same advocates call upon twelve respectable citizens, to resolve upon their oaths, all those intricate and entangled questions, as if your habits, or your education, or your studies, enabled you to decide them. If this be fair and justifiable in the counsel for the traverser, it would not, at least, be fair in me; and I protest solemnly, that if I knew a popular topic, by which I could mislead you upon the law, I would not urge it to you; and I assure you, that in what I shall address to the Court upon the Convention Act, I shall think myself precluded from directing a single observation, or a single look to the jury-box.

I know that we live in extraordinary times; I know, that factious and wicked men have taken the most unjustifiable means to pre-occupy and mislead the public mind—I know, that the press has overflowed with the most audacious and libellous publications, presumptuously dictating to the judges of the land, in the discharge of their duty, and incultating upon juries, a contempt for the authority of the Court; I know, that county meetings have been convened throughout the island; that country gentlemen might enlighten the

courts of justice by their readings upon acts of parliament; and I know, that the keeper of the great seal has been taught the law by a justice of the peace.

But I trust in God that those monstrous and alarming novelties may never find their way within the walls of a court. They will become the agitators and the demagogues out of doors, who, without such practices, could not inflame or mislead the public mind; but I trust, that the temple of justice may never be profaned by doctrines so offensive to the principles of the constitution. That constitution defines, with rigid exactness, the respective duties of the bench and the jury-box. Every constitutional mind is appalled by the alarm which is excited by confounding the functions of those contiguous tribunals. Every one would be shocked by the notion that the judge should interfere with the jury's right to decide upon the *fact*, and yet it is not more revolting to constitutional maxims than that the jury should arrogate to themselves to pronounce upon the *law*. They are, equally, encroachments and invasions upon our pure administration of public justice, and if ever they be permitted, woe to the constitution; it could not survive such an assault.

What is there in the constitution, the subject of so much eulogy and declamation this day, so valuable, as the administration of justice? We love the constitution, because it gives us—for the preservation of public peace, and the adjustment of civil rights—a perfect administration of justice, unknown to other countries, which, in its turn, supports, maintains, and preserves that constitution. Woe then to that constitution (I borrow the strong exclamations of Mr. Gould), woe to it, when its first principle is invaded and its corner stone subverted. I make every allowance for the advocate; I know how much his duty to his client demands from him. He may stand excused for calling upon you for this preposterous usurpation of the Court's authority, but you could not stand justified if you obeyed the call. If this were a civil action, if a question of property depended between two parties, should the counsel call upon you to break away from the Court, and construe a limitation in a deed, or a devise in a will—should you not laugh at them? What then is the difference? If you would not have a right, in the one case, how can you in the other? Or does a trial of this nature warrant your assumption of power, because, not the *property* of your fellow-citizens, but the *peace* of your country is at stake? If any man, not an advocate, gave you such advice, would you consider him as a friend; and when an advocate gives it, though you may forgive him for his zeal, will you act upon his counsel? And yet, gentlemen, if this be justifiable, where is the confusion to stop? Why have they not called upon the judges to decide upon the weight of the evidence and the credit of the witnesses? Why have they stopped half way in the discharge of their duty; and when they

throw the statute into your box, why did they not send up the issue to the bench?

I own that I am warm upon the subject, and anxious to establish this distinction. No man, attached to the constitution or acquainted with the laws of his country, can be indifferent upon such a topic; but I am more—I am interested in it. My right hon. and learned friend and myself, as the sworn advisers of the Crown in matters of law, have given our opinions upon the construction of this statute, when called upon to do so; and if we have been wrong, in that opinion, we are deeply responsible. Of my own opinion I think with unaffected humility; when it is supported by his I feel an honest confidence that it is not mistaken; but even that confidence, I feel, not without deference to those learned and respectable persons who may have seen the matter in another point of view. I expect from them the same charity and the same fairness. They will not impute to us more than error of judgment; and, if we are mistaken, let us stand rebuked, though not abashed, because no one will ascribe more than mistake to us. Let us stand rebuked, I say, but by whom? Who is to judge between us and those who differ from us? Are we and our characters at the mercy of a jury usurping the interpretation of the law? Are we to be judged by the presumptuous nonsense of newspaper criticism? Is our knowledge of the laws of our country to be appreciated by the ravings of country gentlemen, declaiming upon acts of parliament? God forbid! We appeal, from such arrogant and audacious tribunals, to you, my lords, the sworn judges of the land—you are to interpret this act of parliament, upon your oaths and your high responsibilities. By you let us be judged, we disclaim all other authority: if you say that we have been right, we have done our duty to our sovereign and our country: if we have erred, I repeat it again, we are deeply answerable.

To decide this question, and to have the law ascertained and the public mind quieted upon this important subject, have these prosecutions been instituted: not for the purpose, as has been unjustifiably asserted, of persecuting Dr. Sheridan, or of subjecting any honest man to punishment. Doctor Sheridan has been warmly panegyricized, and though I have not the honour of knowing him, I doubt not that he deserves the eulogies which, in a trial of this nature, have been so unnecessarily heaped upon him. I will go further, and say that I doubt not but that he conceives himself to have acted justifiably, and violated the laws of his country without any intention of doing so. I can well believe that he and other worthy men have acted under those mistaken impressions which the misrepresentations of the Convention act have suggested to so many; but it is not the less true, that if he has violated that law he must be convicted. No man can be so weak or malignant as maliciously to impute to government the wish to

inflict upon him those miserable sufferings, which have been anticipated and deplored with so much misplaced pathos—example, and not punishment, is our object. If he be innocent, in point of fact, and has been falsely accused; nay, if a reasonable doubt can be entertained of his guilt, or if you shall hear from the Court, that, in point of law, he has not violated the statute, I trust that you may acquit him. None of his advocates or friends will rejoice in such an event more than myself; but if you should acquit him, let your acquittal rest upon some such solid principles as I have suggested, which will justify you to your country, your consciences, and your God. I only deprecate that most formidable of evils—characteristic of bad times—a popular verdict, which has been clamorously demanded from you this day—a verdict which confounds every principle dear to public justice, and exhibits a jury in the disgraceful act of trampling on the laws which they are sworn to administer.

Let me now call your attention to those facts upon which you are bound to decide. Doctor Sheridan is charged with having participated in an election at Lifsey-street chapel, on the 31st of July, of five members, to represent the Catholics in a committee, appointed on the 9th of July, at an aggregate meeting, on the pretence of petitioning parliament for a repeal of the penal laws. In order to establish that fact, two witnesses have been produced, to prove what occurred at the meeting in Lifsey-street chapel, who had been sent there for the purpose of observing what should pass; if they have sworn truly, they have proved the charge in the most distinct and satisfactory manner, and upon comparing their testimony with that of Mr. Huddleston, you will observe that the number of parochial delegates whom they represent to have been elected on the 31st, exactly corresponds with the number which he states to have been announced on the 9th of July. Those persons have been cross-examined with the utmost severity, and have been treated as if their story had been, from the beginning to the end, a shameful fabrication; every artifice has been practised to embarrass or confound them; they have been exposed to that unequal contest in which persons of their rank, or indeed of any rank, are exposed, when opposed to a professional antagonist. The vulgar cry of spy and informer has been hallooed against them; and any man who heard the cross-examination, would believe that the counsel had been instructed to deny the existence of any meeting at Lifsey-street chapel upon that day. But, gentlemen, no witnesses have been produced to impeach their moral character, or contradict their testimony; they swore that Mr. Kirwan and Dr. Burke, and many more persons now in this court, were present, and partook in the election. If their story were a fabrication, why not produce those gentlemen to contradict it? Why not prove, by them, that they were not present at any such meet-

ing, or that, if they were, Dr. Sheridan was not? I need not pursue this argument further; the counsel, who was instructed to controvert the fact, has saved me the trouble; he asked those witnesses whether the resolutions which Dr. Sheridan put at that meeting, were not reduced to writing, and actually put his brief into their hands, calling on them to read the resolutions which really passed. Well, then, we have got so far as that there was such a meeting; that Dr. Sheridan presided at it; and what remains? Why, a question upon the accuracy of their recollection, as to the substance of the resolutions. Gentlemen, unimpeached men have given you their oaths upon that fact, and who has contradicted them? Did you not, yesterday, hear the whole bar of the traverser's counsel exclaim, in chorus, that they had 500 witnesses to contradict them, and that the resolutions were not as stated. What has become of the 500? Not one of them has been produced; Mr. Kirwan is by my side; Doctor Burke is in my eye; they were here yesterday; surely, if they had been produced, and had stated, upon their respectable characters, that the crown's witnesses had been mistaken; if the original of the counsel's brief, containing the *genuine* resolutions, had been exhibited, and demonstrated the mistake; surely you would not have been left in your present darkness; but no such light is afforded to you. Witnesses in court, who could contradict ours, are withheld; the written document in their hand is suppressed; and you are called upon rashly to disbelieve what they will not controvert; to impute, by your verdict, perjury to the witnesses for the crown, and to declare, upon your oaths, that you do not believe that which they will not deny.

Gentlemen, I am at a loss, in discharging this duty, to discover what I am to reply to; one counsel asserts his client's innocence in point of *fact*; the other glories in his crime in point of *law*; nay, the one half of each counsel's speech is an answer to the other: they alternately rail against the witnesses, or declaim in favour of the offence. What has been their conduct as to Mr. Huddleston, the remaining witness? What has been left unsaid or unattempted, in his cross-examination? Two hours of precious and irrecoverable time have been consumed, in attempting to discredit a witness, who has only proved the proceedings of the aggregate meeting of the 9th of July, at which lord Fingall presided. No suborned miscreant who ever attempted to take away an innocent man's life, was ever treated with more asperity; no advocate, retained for a felon at the Old Bailey, ever plunged more desperately through a cross-examination, trembling for the wretch, whose only defence was, the hope of confounding his prosecutor, or supporting his *alibi*. The man's feelings were agonized; he was stretched on a rack and tortured; his private life anatomized; his most secret sentiments scrutinized; he was called upon to swear to his religious opinions,



and, even in this court, public disgust was clamorously excited by exhibiting him as a recreant from the religion of his ancestors, his birth, his connexions, his country, his faith, his morals, his circumstances, all ransacked, all exposed. He was asked was he not a deist, was he not an atheist, had he not been a Catholic, was he not a Protestant, had he not been an officer, was he not a reporter for the newspapers, was he not an Englishman; nay, to crown the climax, was he not a Cambridge man, had he not taken notes and lost his memory, had he not wished for an employment, and lost his conscience. What would any stranger who came into this court have supposed, who had looked upon the victim on the table, and heard and seen the counsel at the bar? Would he not have imagined that the most shameful fabricator of the most impudent lie was undergoing well-deserved chastisement for his falsehood? What did the counsel himself say to him? Sir, I apprise you that I am shaking your credit. Gentlemen, why so shake his credit? It required not the storm of Mr. Goold's eloquence to subvert it, a breath from lord Fingall would have dissipated it. That noble personage sat under your box at the moment, and sits there now—why did not, why does he not come forward and assert, either that such a meeting did not exist, or that he did not preside in it, or that no such resolutions were passed. His *said* I should not require; were he on his *knave*, knowing, as I do, his high reputation for public and for private worth, to have so declared, I protest, for one, that I should abandon so much of this prosecution as depended upon any assertion which he should so contradict. I see other noble and honourable men about me, all alleged by Huddleston to have been present on that occasion. Why have none of them come forward? How do they and my lord Fingall reconcile it to their feelings, to sit by and hear it asserted that the witness has sworn falsely, in charging them with having assisted at the meeting of the 9th of July? Will they say that they were not at such meeting, or will they have it understood that they and their friends struggle not for justification, but impunity? Is it the fact of the assembly that is controverted? I have not a right to appeal to public notoriety—I must observe upon evidence merely—but I may observe also upon the want of it, and I ask again, is that fact denied? Why not produce those persons most capable of contradicting it? I ask, into what has shrunk the pompous triumph of the defence? I ask, what has become of the reiterated assertions, within and without this court, of the legality of the delegation? It is reduced to a miserable denial of the fact, without the production of a witness to support it. Perhaps it will be said, that the meeting was not denied, but that the purport of the resolutions has been misrepresented by Huddleston. With what an argument has Mr. Goold finished: what upon this topic? Do

you remember the zeal and the fire, I had almost said the rage, with which, after labouring to show that there was no such assembly at all, he addressed the witness and said:—"Sir, upon your oath, were not all the resolutions passed that day, reduced to writing; and have they not been published with lord Fingall's signature in every newspaper in 'Dublin'?" Such was the question. Gentlemen, for God's sake, what has become of all the newspapers in Dublin? Why has not one of them been produced? Why has not the secretary who transcribed the resolutions and sent them to the press, been produced? I ask again, why the noble chairman now sitting before me, and who signed them, has not been produced? The word *sworn* has been warmly, I shall use a stronger phrase, certainly with more warmth than decorum, applied to the witnesses for the Crown. It is a vulgar and a silly insinuation, which the counsel has been instructed to make. Who is so stupid as to suppose that those who carry on these prosecutions would condescend to such practices? I have no fear in the face of our profession, and the public to offer our character as a refutation of the slander. What interest has any man in the conviction of Doctor Sheridan, that he should achieve it by subornation? What motive can be imputed to any person, acting for the crown, but a wish to amend the law and maintain the public peace? Those who deal in such insinuations would do well to remember the nature of their own defence, consisting in clamorous invective against the credit of witnesses, whom, if false, they could contradict, and will not. Let me not be answered by the trite observation that lord Fingall and his friends, and Dr. Burke and Mr. Kirwan, could not be produced, because they could not be asked a question, the answer to which might criminate themselves. The reply is obvious: if the witnesses for the crown have sworn falsely; those gentlemen could not criminate themselves, their answers must acquit themselves and Dr. Sheridan; and it is only upon supposition that the testimony for the prosecution is true, that any danger could result from producing them. Suppose, that the witnesses for the crown are base and infamous, yet the most base and infamous men may swear truth. Is there no corroboration of their evidence in the silence of those who could contradict them? Why has no one been produced to account for ordering the coincidence alleged by them; that on the 9th of July, lord Fingall announced a correction of a particular line, and that, in twenty-two days afterwards an election-tale place in Liffey-street, returning from Mary's parish, he exacted some number of delegates which had been required for every parish by lord Fingall's proclamation? Why has the election been confined to unfounded assertions and popular clamour? I ask you again what is the result of such a defence? I ask you, will you venture upon such a defence to commit the

crown's witnesses of perjury? I ask you, will you venture to hang a doubt upon their testimony, when the traverser's counsel could have removed every doubt, and refuse to do it? I tell you again, in anticipation of what you shall hear from the bench, that if you entertain a doubt upon the fact, you ought to acquit; but pause—pause awfully, before you entertain it. It must be no light capricious doubt; such as a man finds not as a justification, but seeks for as an excuse. It must be such a doubt as a sound understanding can suggest to an honest heart. If you can entertain such a doubt, acquit. I will not use the confident language of the traverser's counsel; I will not say, find such a verdict if you dare; but I say, find it if you can.

My lords, I turn from the jury to the bench,—to address you upon the law of the case. I have little more to do, than to go over the same ground which the attorney-general has trod before me, at the risk, common to all who follow him, of effacing his impressions. Mr. Burrows has, however, so strenuously contended for a different construction, that I am bound to advert to his argument, and if I can, refute it. He has reasoned on three several propositions: First, That the delegation prohibited by the statute, is one for general representation, and not one for a particular purpose. Secondly, That the word *pretence* means *false pretence*, and not real purpose, and that if the object of the delegation be *really* to petition, no offence is committed: and thirdly, that by the proviso in the statute, the right of petition by the means of delegation is saved. I shall invert his order, and, beginning with his third proposition, which relies upon the proviso, I shall only remark, that it must stand or fall with his second, and abide its fate, because, if it be admitted that *pretence* means real purpose, then his construction of the proviso, which he says saves something out of the enactment, becomes nugatory; for then the statute would prohibit real petitioning by delegation, and the proviso would save it, that is, the statute would do nothing. He must, therefore, shew that *pretence* means *false pretence*, or the proviso is of no avail to him. In considering that proposition, I shall not resort to poets or dictionaries for the meaning of the word, but being in a court of law, shall at once call your attention to an act of parliament, enacted in England, 13 Car. 2nd, c. 5, upon the same subject, and from which our Convention act has been copied, with as little variation as the different circumstances of the two countries would permit. The object of both was, to restrain the abuse of the right of petitioning. In England the mischief to be prevented was, the collection of *mote*; in Ireland, the assembling of *self-created parliaments and conventions*. Every one who knows the history of the two countries, will admit that such were the respective evils at the times those laws were enacted; and it will be seen that they were made *in pari materia*. The word *pretence* is used in

both, and if I can shew, that in the English act it does not mean false pretence, but purpose and object, whether real or fictitious, I certainly shall have gone some length in ascertaining its signification in the Irish statute, which has been borrowed from the English. The title of the English act is, “An act against tumult and disorders, upon *pretence* of preparing or presenting public petitions or other addresses to his majesty or the parliament.” The title of the Irish act is, “An act to prevent the election or appointment of unlawful assemblies, under *pretence* of preparing public petitions, or other addresses to his majesty or the parliament.” The preambles are almost (considering the difference of objects) the same. Now, the very object of the English act is, to limit the number of persons who shall prepare or present petitions to the king or parliament, to twenty in the one case, and ten in the other; and it has been the law of England from that day to this, that no greater numbers can prepare or present petitions however real: Now, in this act, the word *pretence* is used exactly as in the Irish;—“no persons whatsoever shall repair to the king or parliament, upon *pretence* of presenting or delivering any petition, &c. &c. above the number of, &c. &c.” It will remain, then, for those who can, to shew, that in the two statutes the same word is to have two different meanings. If it be asked, what meaning is to be given to the proviso in the Irish statute, the answer is obvious. It is not an exception or saving out of the act of any thing enacted in it; for whatever is so excepted is to be found in a distinct saving in the enacting clause, but it is such a provision as your lordships well know is to be found in several statutes, in the nature of a protestation, to exclude an unjust conclusion. It is as much as to say, let no one suppose that this act invades the sacred right of petitioning. It only enacts that the right of petitioning shall not be exercised through the medium of delegated assemblies.

Let me now call your attention to the absurdity which must follow from giving to *pretence* in the Irish statute the meaning of *false pretence*. The first section declares, that all assemblies, committees, or other bodies of persons elected, or in any other manner appointed, to represent any portion of the people, under the pretence of petitioning for, or in any other manner procuring an alteration of matters established by law, are unlawful assemblies, and it shall be lawful for any mayor, sheriff, justice of the peace, or other peace officer, and they are thereby required to disperse all such unlawful assemblies, and if resisted, to enter into the same, and apprehend all persons offending in that behalf. Now, if *pretence* means false pretence, no magistrate would be warranted in dispersing a meeting, really and *bona fide* assembled for the purposes of petitioning, and who is to decide that delicate and difficult question? Can it have been the intention of the legislature to intrust such

a decision to any peace officer; and if so, how is he to decide it? How is he to ascertain, whether the alleged petition be real or fictitious, except by permitting the assembly to meet, and watch its conduct until it shall have concluded its business? That is, suffer it to adjourn *sine die*, in order to determine, whether he ought to disperse those who have ceased to assemble. The statute also authorises him, if resisted, to enter into the meeting; so then *pretence* means false pretence, the legality of his entry must depend, not upon his inference from his observation of the proceedings,—for upon this supposition he has not been allowed to observe them—but upon the soundness of his conjecture, as to what he should observe, if admitted—that is, he will be a trespasser or not, according to the guess, which he may make outside the door, as to the real object of the meeting within. The second section is not pointed at the assembly when met, but at those who in any way partake or concur in the election to it, and they are declared guilty of a high misdemeanor, nay, this is extended to all those who publish or give notice of such an election.

Now, announcing the election, or partaking in it, are clearly offences which may be committed and completed although the assembly itself should never meet; but, according to the construction contended for, they could never be prosecuted until not only the assembly had met, but until it should be ascertained by its meeting, that its pretence of petitioning was fictitious; that is, the present prosecution is premature. It should have lain in abeyance until the Catholic committee had met, and until the nature of its institution had been proved, by the course of its proceedings. No interpretation of a statute can be sound, which leads to such absurdities; and I cannot try this reasoning by a fairer test, than by supposing, that all which has been urged in argument, were inserted in the statute. If nonsense should be the result, the argument cannot be good. Suppose the act to have stated, that all such assemblies were at the first moment unlawful, provided that it should appear after their sittings were concluded, that their petition was fictitious. Suppose it enacted, that every peace officer should disperse them, provided always, that he was of opinion, after they had met, that their petition was fictitious. Suppose it enacted, that every peace officer should be at liberty to enter the meeting, provided that before he entered it, he should be convinced that no real petition was to be proposed in it. Suppose it enacted, that merely to publish a notice of an election for such a meeting, should be a high misdemeanor, provided always, and not otherwise, that thereafter it should appear, that no real petition was the object of the meeting. I cannot conceive a fairer test by which to try and decide the construction of this act.

Look again at the saving in the statute, for the houses of parliament and convocation: if

*pretence* means false pretence, then the legislature has declared, that parliament alone shall meet on the false pretence of procuring an alteration of matters established by law. Look at the words, “under *pretence* of petitioning for, or in any other manner procuring, an alteration of matters established by law in church and state.” If *pretence* means false pretence, in the first part of this sentence, which relates to petitioning, it must in the second, which relates to procuring alteration, and then the meaning will be, that all assemblies are unlawful, except the parliament, which pretend falsely to procure such alteration, and the necessary inference must be, that all assemblies, except the parliament, are lawful which profess truly to do so. This absurdity must follow, unless pretence, in the same sentence, shall be held to have two opposite meanings.

I come now to Mr. Burrowes's first argument, which, as well as I can understand it, is, that there is a distinction between general representation, and delegation for a particular purpose; and he has endeavoured to establish that distinction, by reading the proceedings of some assembly, against which, he says, this statute was levelled: and which announced an intention to usurp legislative authority, and to change the fundamental laws and establishments of the country; and he says, that such an assembly would be within the act, but that an assembly for the exclusive purpose of petitioning, would not. I apprehend, that his argument is built upon a sophism, and a mistake of the principles of this law. It is not as he would suggest, a law against bad objects, to be achieved by the assembly when met. It is a law against the very act of assembling. It is a law founded on the same principles, as the Whiteboy acts, in which that rage for associations, which always has been characteristic of all ranks in this country, is denounced, by declaring it a high crime and misdemeanor, for persons assuming any name, or badge, or denomination, not usually assumed by his majesty's subjects to assemble, although no act has been committed, or no arm raised. It is a law to prevent mischiefs, not to punish them, when committed—it is a law passed on the recollection of the various conventions, and assemblies, and associations which had, from time to time, threatened the peace of this country: I go not back to former centuries—the Dungannon meeting, the Volunteer convention at the Rodens, the meditated parliament at Athlone, are fresh in the recollection of many of us. In contemplation of those mischiefs, which representative associations are calculated to produce, was this act framed, and the crime, denounced by it, is complete, whenever a representative body is elected, with the view of procuring a change in matters established by law, though the mode of doing so, should be by petition. Mr. Burrowes seems to think, that in order to complete this crime, legislative authority must be

assembled. Does he mean to say, that no assembly is within this act, unless it displaces parliament, and enacts laws, and imposes taxes? Does he mean to argue, that the legislature had declared that to be a misdemeanor, which the law had before declared to be high treason? Must the act which speaks of petitioning parliament, only apply to assemblies, which have displaced parliament? What would Mr. Burrowes say of an elected, and delegated assembly, if such a one should exist, which, professing to prepare a petition, should sit, from July to February, and day after day, and week after week, assemble and debate, and do every thing but petition; which should publish inflammatory and incendiary discussions, upon all political topics; which should mimic, and travesty all the proceedings of parliament—appoint committees—and receive reports; which should supersede, and straddle the legislature, by the discussion of public, and the courts of justice, by the discussion of private grievances? If such an assembly should exist, would he say, that because it abstained from imposing taxes and enacting laws, it would not fall within the Convention act, that its innocence should depend, not upon what it did, but what it did not; that its members should not be guilty of a misdemeanor, because they were innocent of treason?

I think, if he said so, he would much mistake the law. I think if I said, that their guilt consisted in such acts, as I supposed, I should mistake it too—we should both be wrong and our common sophism would be, that we tried the legality of the assembly by the test of its acts, and not by the test of its constitution. The framers of this law well knew the tendency of such associations as it prohibits—they well knew that worthy and honourable men might engage in them, as I have no doubt that worthy and honourable and loyal men would engage in the Catholic committee, with the purest and the best of motives. But the policy of the law is pointed at the probable mischiefs, and the very preamble of the act is directed to the dangers which in the language of the statute, may ensue. What man can answer for the intermixture of those very different characters which must find their way into such an assembly? I know that the Catholic nobility and clergy, amongst whom are to be found the most respectable of men, were to be constituent parts, but I know that every county was to send ten, and every parish in this city to send five members. Who will answer for the description of persons that must find their way into this motley congregation? It is not from such men as lord Fingall, and lord Southwell, and sir Edward Bellew, and the other honourable men of the Catholic persuasion, that such danger is to be apprehended—short lived, indeed, would be their influence. Perhaps the worst men would not be the most numerous in this assembly—it signifies not; a small minority of agitators is always sufficient for mischief. The history of mankind shows,

that they have always prevailed—in every such assembly they float, and the good are precipitated:—But the policy of this act is not merely pointed at the intermixture of bad, but the degeneracy of good characters. What man can answer for himself, in going into a self-constituted political society? his first steps are deliberate; his first motives are good; his passions warm as he proceeds; the applause, never given to moderation, intoxicates him; the vehemence of debate elates, and the success of eloquence inflames him; he begins a patriot, he ends a revolutionist. Is this fancy or history? I well remember—who can forget?—the first National Assembly of France? Composed of every thing the most honourable, gallant, venerable and patriotic in that kingdom; called together for the noblest and the purest purposes, the nobility and the prelacy, united with the representatives of the people, and the three estates promised the regeneration of the country; what was the result? The wise, and the good, and the virtuous were put down, or brought over by the upstart, and the factious, and the demagogue; they knew not the lengths they were going, they were drawn on by an increasing attraction, step after step, and day after day, to that vortex in which have been buried even the ruins of every establishment, religious and political, and from whose womb has sprung that colossal despotism which now frowns upon mankind. What has become of that gallant nobility—where are the pious prelates of that ancient kingdom—one by one, and crowd by crowd, they have fallen upon the scaffold, or perished in insurrection. Some—less fortunate—drag out a mendicant exile in foreign lands, and others, condemned to a harder fate, have taken refuge in a Tyrant's court, and are expiating the patriotism of their early lives, by the servility of their latter days.

My Lords, and Gentlemen of the Jury—I have digressed involuntarily, I hope not irrelevantly, from the argument upon the law of this case to the consideration of the policy of the statute. It was necessary, for nothing has been more misunderstood; it has been foolishly and wickedly asserted, that this statute and these prosecutions have been levelled at the Roman Catholic cause; the charge is false: if this act were violated by any other class of men in the state, whether Protestants, Presbyterians or others, I know the fairness and the impartiality of my learned and right honourable friend to be such, that the religion which they professed would never have shielded them from prosecution. It has been clamorously urged, that the government has declared war against the subjects' right of petitioning, which Mr. Burrowes has insisted is unlimited, and like the freedom of the press, not subject to previous restraint, and only controllable for subsequent excess: this is a most mistaken view of the constitution; there is no such principle known to our constitution as those illimitable rights: our constitution exists by

its restraints, its controls, its checks and balances. The royal prerogative is defined within a rigid boundary; the privileges of the nobles are ascertained by jealous limitations, and if the rights of the people were not circumscribed, woe be to the people, and woe to that constitution, which has been this day so eulogized, and so much misrepresented; the state would be disorganized, the democratic part would preponderate, and anarchy would be the consequence. The contrary is new doctrine, the growth of modern and licentious times—such was not the opinion of my lord Sommers and the great men, the Whigs of his day, who in the Bill of Rights laid the corner stone of the constitution in king William's reign. In that second Magna Charta they asserted and established this right of petition, as the birthright of Englishmen; but they did not venture to establish it, except as subject to the restrictions imposed on it by the statute of Charles 2nd. Your lordships know, that this has been decided by the highest authority—that when upon the trial of lord George Gordon,\* another opinion was contended for at the bar, all the judges unanimously declared that such was the law. That law was never enacted here, but the misfortunes of our country have made another and a different restriction of the right to petition necessary. Those laws speak a common principle, though a different language. In England, the people are told, that even the inestimable privilege to petition shall not be the pretext for a mob, and in Ireland, they must be told, that it shall not be a pretext for a convention. No rational man will say, that for the fair and legitimate purpose of petitioning the parliament, a convention of three estates, consisting of nearly six hundred persons, sitting in a public theatre, without limit or control, can be necessary; the public peace forbids such an association, and the law emphatically has declared, that there shall be but one parliament in the country.

I repeat it, it is new and unconstitutional doctrine to talk of the unrestrained rights of the people. What is that most precious right of the people of these countries, which the Catholic committee is about to usurp? The right of representation. That which distinguishes us from all the nations of the earth. Is it unrestrained, and until the announcing of this Catholic committee, was it ever uncontrolled? The rights and qualifications of electors are measured by property, situation and independence. The freeholders of the country alone can exercise them; and some classes are excluded, on account of their supposed dependence. The title to be an elector must be ascertained by registry, and identified by record. The capacity to be elected is confined within necessary restrictions; the law of election is complicated, and nice, and a particular tribunal is constituted to administer it. The king's writ issues to the public officer, and

under the heaviest responsibilities he obeys and executes it. When the senate is convened, the members are under the control of their Speaker. Their very privilege of speech is definite, and their duration depends upon the king, who can prorogue or dissolve them. Such is the utmost right of representation, which the freest constitution upon earth allows to the people; and if the popular part of that constitution were not thus restrained, it would degenerate into wild democracy, and fatal anarchy. Compare this right of representation, with that claimed by the Catholic committee, and in the contrast, behold the wisdom of the Convention Act, and the necessity of these prosecutions. See what is the constitution of those self-created parliaments, which that statute denounces as illegal, and which this prosecution is instituted to put down. What is their law of election? what their qualification of freeholders? what is their description of candidates? I assert not too much, when I assert, if the legitimate parliament of the realm were to be assembled, as this committee has been, that the constitution would not survive the first election. What is their claim to this monstrous assumption of power? It grows actually out of their numbers, and the Catholics assert it, because they are four or five millions of people. What then are four or five millions to elect? whose writ summons them? what officer in each county is to hold the election?—who is to decide upon the votes?—who is to identify the successful candidate? Every man of the four millions is qualified to be an elector or a representative, and in the county of Meath, my lord Fingall, in the exercise of either character, might be jostled by a beggar or a rebel, claiming a superior qualification. Can it be the constitution, or the law, that what is denied to the parliament, shall be allowed to a committee—and that all the evils of democracy shall be let loose upon the land; universal suffrage; promiscuous eligibility, and indiscriminate representation? But suppose this extraordinary meeting to assemble, who is to control them if they run riot? Who is their speaker? Who is their serjeant at arms? Who will have the authority—if any one has the courage—to check licentious and disaffected declamation? Who is the man of any rank, that would have spirit or power to interrupt, or rebuke a factious orator? which of the loyal men in that assembly would venture to chide an inflammatory harangue, offensive to his feelings, and odious to his principles?—If in such an assembly, a such young man, inflamed by debate, should loudly assert, that the glorious yeomanry of Ireland were the exterminators of their countrymen, and should eulogize and hold up to veneration, and respect, the rebels of 1798, as patriots and martyrs—who is there to call him to order? What man, in a popular and self-constituted assembly, would venture to interrupt him? The very nature, and constitution of the assembly generates danger and encourages ex-

\* 21 How, St. Tr. 485.

case. Compare such a constitution with the established authorities of the land; all controlled, confined to their respective spheres, balancing and gravitating to each other—all symmetry—all order, all harmony. Behold on the other hand—this prodigy in the political hemisphere, with eccentric course and portentous glare, bound by no attraction—disclaiming any orbit—disturbing the system—and affrighting the world.

## SUMMING UP.

Lord Chief Justice *Dowse*.—Gentlemen of the jury; this important case is now brought nearly to a termination, and it is our duty to tell you, precisely, what it is you have to try; what are the charges which have been preferred against the traverser; what evidence has been adduced in support of those charges; the defence which has been made, and the law arising upon the facts, which have been proved, connected with that defence.

The indictment contains two charges; the first is, that an assembly was held at Fishamble-street, on the 9th of July, 1811, where it was resolved, that a certain assembly of the Catholics of Ireland should be held, to be composed of persons described in that resolution, and that the traverser afterwards acted in the appointment and election of Mr. Kirwan to be a member of that assembly, which is alleged to be criminal, under the act of parliament in question.

The second count of the indictment, without stating the antecedent meeting at Fishamble-street, on the ninth of July, rests solely upon the acts which were done subsequent thereto, at the meeting in Liffey-street, and stating the conduct of Mr. Sheridan, the traverser, as assisting in the election of Mr. Kirwan to be one of the representatives of the Roman Catholic inhabitants of the parish of St. Mary, in a general committee to be thereafter held, and which committee is also alleged to be an illegal assembly, under the same statute.

[His lordship stated the indictment at length, and then proceeded.]

Gentlemen, you will observe then, that the two counts charge in substance; first, that an assembly was held on the ninth of July, at which the defendant is not charged with having done any act, but that it was resolved, that representatives should be appointed, for a subsequent assembly, and he is charged, with so acting at a parish meeting, in electing representatives, as to carry that resolution into effect; and in the second count, he is charged with the same conduct, without any reference to the antecedent meeting, or the resolution then entered into. But that he the traverser, and divers others, met and assembled for the purpose of appointing five persons to act as representatives of all the inhabitants of the Roman Catholic religion of the parish mentioned, in a committee of persons professing the Roman Catholic religion, to be thereafter

held, and to exercise the right and authority to represent the Roman Catholic inhabitants of Ireland, under pretence of preparing petitions to parliament, to repeal the laws affecting the Roman Catholics, and thereby procuring an alteration of the said matters established by law.

To establish the facts thus charged, as constituting an offence under the act of parliament, three witnesses have been called. The first witness was John Sheppard.

[Here his lordship recapitulated the testimony of this witness.]

Gentlemen, you see, from what this witness has stated, upon his direct examination, that a meeting was held in Liffey-street chapel; that Doctor Sheridan, the defendant, presided in the chair; that a proposition was made, and carried, to elect five persons to represent that parish in a subsequent meeting, which election was accordingly held. These acts shew, if you believe the witness to have sworn truly, that Dr. Sheridan did act in the manner alleged in the indictment, namely, in the election of Mr. Kirwan, for the purpose therein stated, and it will remain to consider, whether such acts be criminal by the law, or not.

This witness was cross-examined; a resolution was handed to him, which he read; he said, it was the same as the first resolution that was passed at the meeting; but, upon being desired to read the second, he said, it was not so full as that which was passed at the meeting; and it appeared, in the course of his cross-examination, that he was doubtful whether the word "represent" was used; but he admitted, that no seditious language was used; that the meeting was respectable, and their conduct decorous.

The next witness was James M'Donough, who was called to the same facts.

[Here his lordship read from his notes, the testimony of this second witness.]

Gentlemen, his account of what passed, at the chapel in Liffey-street, is similar to what was stated by Sheppard. It appeared from the testimony of these witnesses, that the defendant, Dr. Sheridan, put the question upon the election of Mr. Kirwan, which was carried in the affirmative. Both these witnesses agree in the account which they give of the proceedings of the meeting; the election of five persons, and the part which Dr. Sheridan took in that election; and it will be for you to say, whether those witnesses are to be believed, and if so, whether that election was for such purposes, as are stated by the indictment, and I shall presently inform you whether such acts are criminal under the act of parliament.

One of these witnesses was called upon, this morning, to explain some circumstances which appeared in his informations, and that did not appear precisely to correspond with his evidence upon the trial; and he stated, that he meant in his informations, to represent, that he

saw a gentleman, whom he took to be Doctor Breene, without meaning to swear, positively, that he was at the meeting; but that he told Sheppard, the other witness, that a person whom he saw, was, as he thought, Doctor Breene; that seven persons were named by him as in the chapel, as if being present, and that he, the witness, thought they were all present at the time, but that he actually saw only some of them, and, he says, he meant to represent, that he saw a gentleman, whom he thought was Doctor Breene: that he did not see him in the chapel, but in the yard, as he was leaving the chapel.

With regard to this witness, it will be for you to say, whether you believe that the facts, which are stated by him, actually took place in the chapel on the 31st of July. If you doubt the truth of his account, and that of the other witness, from any circumstance in the manner of giving their evidence, if you doubt, that these witnesses were there; that they saw Dr. Sheridan acting at such an election as they have described; then certainly, the whole of the case is at an end. But, if you believe their testimony, then it will be material for you, to consider the evidence of the other witness, Huddleston, the object of whose testimony was, to shew the existence of the prior assembly, held in Fishamble-street, on the 9th of July; and that they resolved upon the appointment of a subsequent assembly, to be supplied by certain descriptions of persons therein designated, and others to be chosen from each county in Ireland, and a certain number also from each parish in Dublin: it will be for you, to consider, whether from the evidence, you find yourselves bound in your consciences to believe, that the election, which was stated by Sheppard and M'Donough, as having taken place in Liffey-street chapel, was in conformity with the resolutions entered into on the 9th of July, in Fishamble-street, and with a view to the assembly directed by that resolution. Upon the identity of that assembly, ordered and appointed on the 9th of July in Fishamble-street, connected with the election of Mr. Kirwan, and the other persons, at which the defendant, Doctor Sheridan, assisted, it is necessary, that you should be satisfied, in order to establish the facts which are stated in the first count of this indictment [his lordship here recapitulated the testimony of Francis Huddleston and the resolutions entered into on the 9th of July].

Whether the assembly, to which the five persons stated to have been elected at Liffey-street chapel, be identified to your satisfaction, with the resolutions entered into at the meeting of the 9th of July in Fishamble-street, will be for your decision under the first count in the indictment. The circumstances given in evidence to connect them, are the coincidence of the number elected, with the number mentioned in the resolution, the time of their being appointed, and their being elected to represent the Catholic inhabitants of

the parish in a general committee of the Catholics. It will be for you to consider, whether that will satisfy your minds, so as that you shall have no rational doubt, that these persons were appointed, in conformity with the resolutions of the prior assembly; that is, whether the election of the five persons, on the 31st of July in Liffey-street chapel, was in consequence of the resolutions of the meeting in Fishamble-street, on the 9th of July, in order to attach the facts, stated by the indictment, whether criminal or not, upon Doctor Sheridan. If you have any rational doubt, you should acquit him on the first count of the indictment.

The second count of the indictment charges the defendant, Doctor Sheridan, with having acted in the election of Mr. Kirwan, as a representative of the parish of St. Mary, and with having put the question, on his election; and if you believe that evidence, it will be for you to say, combining the law of the case arising from the facts as I shall presently state it, whether the defendant Doctor Sheridan, has acted, in the language of this count of the indictment, in the choice, or appointment of such representatives or delegates, as are declared to be illegal by the act of parliament.—If he has, it will then be your duty to pronounce him guilty.

You have heard the grounds, upon which the credit of the witnesses has been impeached, and you will determine upon them; but it is observable, that although they state facts to have taken place in a numerous assembly of persons—no evidence has been brought forward to contradict them. Sheppard, and M'Donough state the election to have been held on the 31st of July, in Liffey-street; and that the persons elected, were to represent the parish of St. Mary in the general committee of Catholics; and you will have to judge, whether that election falls within the description which has been prohibited by the legislature.

Much discussion has taken place upon the act of parliament, and a most important question arises upon it. It will be my duty, to state to you the mode in which the Court construe it. It is intitled "an act to prevent the election, or appointment of unlawful assemblies under pretence of preparing or presenting petitions to his majesty or the parliament." The description of assemblies, which are meant to be prohibited, is not of necessity confined to such as meet with intent to do any thing in its own nature immoral, or illegal before the statute passed. Cases might fall within this act, of assemblies which might not do any act in itself immoral, or otherwise illegal, than as it contravened this statute, even though they assembled and dissolved without doing any thing injurious to the state. But assemblies of that nature, meeting even with fair and honest views, at the first, might become criminal and dangerous from the nature of their constitution. It is not, that as-

semblies of this description must become so, that they are made criminal, but the legislature, reasonably apprehensive, that they *might* become so, enacted, that assemblies, representing the people, or assuming, or exercising a right of representing the people of this realm, or any number or description of the same, under pretence of petitioning for, or in any other manner procuring an alteration of matters established by law in church or state, should be deemed unlawful assemblies. The act of parliament does not say, that such assemblies *have been actually*, or of necessity *must be* dangerous; but that they *might be* made use of by designing and factious persons; and that riot, tumult, and disorder, might be the consequence.

This being the apprehension of the mischief, which the legislature has stated, that is, that an assembly, representing the people, or any portion of it, under pretence of petitioning may become dangerous, (the probability of which is obvious to every man) the remedy which the legislature adopted against such representative assemblies appears to us, plainly to be, to avoid the possibility of the danger occurring, by preventing their existence, and by punishing every step towards their formation, and by enacting, that if they should be assembled, they are to be held unlawful assemblies, and all magistrates and all peace officers are authorized to disperse them. The mischief then being the danger to the public peace which was likely to arise from such representative assemblies, the statute has pronounced them to be unlawful, and has enacted that it shall be lawful for any mayor, sheriff, justice of the peace, and other peace officers, who are thereby required, to disperse all such unlawful assemblies, and if resisted, to enter into the same, and to apprehend all persons offending in that behalf. This is the remedy which the legislature has given in cases of assemblies of that description being actually convened; such an assembly becomes unlawful from the very moment of its existence, and the magistrates are authorized to disperse it. In order to prevent the possibility of its existence, however, the legislature endeavours to stop it in its very formation, and in every step of its progress; and it begins in the second section, by making it a high misdemeanor to give, or publish, or cause, or procure to be given, or published, any written, or other notice of election to be taken, or of any manner of appointment of any person or persons to be the representative or representatives, delegate or delegates, or to act by any other name or description whatever, as representative, or delegate of the inhabitants, or of any description of the inhabitants, &c. at any such assembly, or if any person shall attend, and vote at such election, or appointment of such representative or delegate, he shall be deemed guilty of a high misdemeanor. Thus, you see, that the legislature has enacted an assembly of this description to be an unlawful assembly,

and makes it a substantive offence in itself, to attend, and act at the election of a person to be a representative in such assembly, or in any other manner to assist in the choice of such a representative.

It has been argued, on the part of the traverser that in order to make a representative assembly which meets under the pretence of petitioning his majesty or the parliament, criminal, such pretence must be a *false* pretence;—in short, that this act of parliament meant only to punish those who constitute an assembly, under the *false pretence* of preparing a petition; but that, if, in reality, such assembly intended to petition, the criminality declared by the statute, does not attach upon them.—This doctrine seems to me to accord very little with the provisions of the act:—the mischief, which the statute meant to provide against, was, as I have already told you, the *possibility* of the consequences, to which a representative assembly might give rise, that mischief is not by any means impossible to happen, even although the parties constituting the assembly, should, in reality, have first met with that honest intention of petitioning; and therefore the remedy seems to us, to go, and we have no doubt it does go, to *all representative assemblies*, meeting to petition the king, or either house of Parliament; and that the object of the act, on account of the possible mischief, was, to prevent persons from meeting by representation, or delegation to procure alterations of matters established in church or state, and that, though an intention of petitioning did in reality exist. To suppose, that a *false pretence* were necessary, would still leave the mischief as complete, and possible, as if the statute never had been enacted;—for, if a false pretence were necessary, in order to bring the parties concerned within the penalties of the act, it would be impossible to discover, whether any such representative assembly meant *really* to petition, until they had *actually petitioned*; or dissolved and separated without petitioning, and yet the statute directs all magistrates to enter into such an assembly, and disperse it, as being unlawful. The statute, in the very origin, makes it penal in any person to give any notice of any election of a representative, or delegate, for such an assembly; and it could not, in my apprehension, intend an assembly, *falsely pretending* to petition, which could not be known until the assembly had met, or perhaps until it had concluded, or dissolved itself. The statute, also makes it a criminal act to vote at such an election and that criminality seems to be complete in the person who shall vote, the very moment that he has committed that act; and yet, if it should be considered to depend upon the opinion of, whether the assembly met with a *true or a false* pretence of petitioning, it would be impossible to consider that offence as complete, and it must depend altogether upon the acts of other persons at a subsequent period,



whether the act of the individual previously committed be an offence or not.

The saving of this statute, seems, to us, also strongly to shew the extensive manner in which the legislature thought fit to prohibit representative assemblies having for their object the procuring such changes as the statute mentions; the words used are so large and comprehensive, that although it never could have been conceived to have been the intention of the parliament to extend the provisions of this act to make the House of Commons, or Houses of Convocation illegal—yet on account of the largeness of the wording of the act, it was thought right to except from the enactment thereof, the House of Commons, and the two Houses of Convocation. It is impossible to conceive, that an exception of that kind would have been introduced, without seeing and feeling at the same time, the vast extent to which the legislature meant to push the enacting clauses in this statute; and that it would be impossible, to keep from within the reach of the enacting clause, any assembly, which should be a representative assembly, under pretence of petitioning for, or in any other manner procuring an alteration of matters established in church and state, save the House of Commons, and the two Houses of Convocation.

I have already stated some of the consequences which would follow from the construction which has been contended for on the part of the defendant; that the assembly designated by the act must be one, meeting under a false pretence. If a representative assembly met for any of the purposes mentioned in the statute, but having a real intention to petition, were exempt from the crime created by the act, in my apprehension, it would make the saving in the statute of the right of petition, perfectly absurd. We are all of us of opinion, that the statute meant to prohibit persons from assembling, by delegation, to petition the king, or the parliament, even although they have a *bona fide* purpose of doing so. If the clause, saving the general right of petition, extended to representative assemblies, really intending to procure a change of particular matters established by law in church and state: I say, if the saving clause has protected such an assembly in consequence of a *real intention* to petition, then, in my apprehension, the statute has done nothing, except perhaps, by such saving clause to establish such an assembly, in direct opposition to the enacting clause.

Upon the whole of this case, we are of opinion, that the statute provides, and meant to provide, against all representative and delegated assemblies, meeting for the purpose of procuring either by petition, or otherwise, an alteration of matters established by law, in church or state; and we are of opinion, even although it should appear, that there was, in reality, an intention to petition, that the cloak of a petition, cannot protect an assembly of

that description from the penalties of the act of parliament.

I have stated to you the grounds upon which we hold that opinion, and I have now only to say, that if you believe, that the traverser, Doctor Sheridan, did act in the election of Mr. Kirwan, a person named in the indictment to be one of the committee and a representative of the inhabitants of the parish of St. Mary, in a future assembly, of the description I have stated from the act of parliament, for the purpose of procuring an alteration of matters established by law, in church or state, even although it might not have been intended to do so by violent means, or any force, but merely petition, that proceeding by petition cannot exempt them from the penalties of the act of parliament; and if you believe, that the assembly was such as I have described, and that it was an assembly appointed by the resolution of the 9th of July, in consequence of which the election of the 31st of the same month took place, I say, if the evidence has connected the two assemblies, so that you have no doubt, from the evidence, of the defendant's being active in the electing of representatives, to serve in the same identical committee or assembly as previously directed; in that case, you will convict the traverser upon the first count of the indictment. But if you are not quite satisfied of that connexion between the two assemblies, then it will be for you to consider, whether the traverser, Dr. Sheridan, acted or assisted in the election of five persons to represent the parish of St. Mary in a future committee or assembly to be held for the purpose, or under the pretence of petitioning his majesty, or either House of Parliament, to procure an alteration of matters established by law, in church or state, it is our duty to tell you, that it is our opinion (upon which we entertain no doubt) that the fact of there being a real intention to petition will not exclude the traverser from the operation of the act of parliament; but that such an assembly is within its meaning and effect. It only remains for me to say, that if you have any reasonable doubt of the credit of the witnesses, respecting the facts which they have detailed, you ought to acquit the traverser.

[The Jury retired.]

Mr. *Burns*.—My lords, we desire to know, whether the bill of indictment against the traverser was sent up to the jury?

Lord Chief Justice.—It is not usual to send the record to the jury; nor do I see that it is necessary.

Mr. Justice *Osborne*.—The indictment might have been read to them, if they wished it.

Mr. *O'Connell*.—The jury are to decide upon the indictment, and they ought to have a copy of it.

[At this instant, two of the jury, Mr. Geale, and Mr. Pepper, came into the court;

the former said, that the jury requested to be furnished with a copy of the indictment.

A copy was accordingly given to them.]

**Mr. Geale.**—My lord, the jury wish to be informed, whether they can find separate verdicts upon the two counts in the indictment? for, the issue-paper handed to us, is, to inquire whether the traverser be guilty of the offences in the indictment, or not?

**Lord Chief Justice.**—You certainly may find separate verdicts, if you think proper. You may find, generally, that the traverser is guilty, or is not guilty, upon the whole matter in the indictment; or, you may find him guilty upon one count, and, not guilty, upon the other.

[The issue-paper was amended accordingly.]

The jury remained in their room for one hour and a half;—upon returning, they were called over.]

**Clerk of the Crown.**—Gentlemen, have you agreed to your verdict?

**Jury.**—We have.

**Clerk of the Crown.**—Who shall say for you?

**Jury.**—The Foreman.

**Clerk of the Crown.**—Is the traverser guilty of the offences in the indictment, or either, and which of them, or not.

**Mr. Geale.**—My lord, this is our verdict—in consequence of our opinion of the insufficiency of the evidence.—NOT GUILTY.

### COURT OF KING'S-BENCH.

*Monday, 27th January, 1812.*

THE trial of **MR. THOMAS KIRWAN** having been appointed for this day, Mr. Sheriff James handed in the panel of the jury, which was called over, when forty-three appeared.

**Mr. Attorney General.**—My lord, I would request, that the defaulters may be called upon fines.

[They were accordingly called upon fines, and the officer then proceeded to swear the jury.]

**Hon. Price Blackwood.**

**Mr. Gould.**—My lords, it is of the last importance, not only to the traverser, but to the public; that this jury should have been impanelled fairly, without any undue influence on the part of the persons concerned in the prosecution. Mr. Burrowes, who is the leading counsel on the same side with me is not yet arrived, and I have to request, that your lordships will wait a few minutes, as he has important matters to state for the consideration of your lordships, previous to the swearing of the jury.

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**Lord Chief Justice Dalrymple.**—Can Mr. Burrowes have any thing to state before the jury is sworn?

**Mr. Burne.**—My lord, he has some important and material matters to lay before your lordships.

[The Court waited some time, and Mr. Burrowes arrived.]

**Mr. Burrowes.**—My lords, it distresses me exceedingly, that I should have been the cause of a moment's delay. I did not understand that the Court would sit before eleven o'clock; nor did I think, that my absence would have prevented my learned friends from proceeding. It is also with great anxiety that I feel it my duty to interpose still further delay, by instituting a previous inquiry, touching the fairness and impartiality of the jury impanelled to try this national cause; and having suggested so much, the Court will at once see, that this preliminary inquiry is as important as the trial which it will precede. My lord, I tender a challenge to the array, and will support it by evidence.

[The challenge was handed in and read.]

“And the said Thomas Kirwan comes and challenges the array, and says, that the said panel was made and arranged by John Kingston James, esq. who is now, and was at the time of the making and arranging of the said panel, one of the sheriffs of the city of Dublin, and who in the name of himself and of Robert Harty, esq. the other sheriff, at the designation, instance, and request of Thomas Kemmis, esq. then and still attorney for the prosecution in this cause, and this he is ready to verify.”

**Mr. Attorney General.**—My lords, I am sure my learned friend does not act thus, with a view to furnish fuel for the newspapers, to inflame the public mind, already too much irritated by seditious publications, to disparage the administration of justice: and yet I cannot help observing, that such a challenge can only be calculated for that purpose. The fact alleged in the challenge is grossly false, and therefore I do not hesitate to join issue upon it. These are attempts to bring reproach upon the administration of justice, and to promote that discontent with the law which is spreading fast through the land. I deny the imputation to have any colour in truth or in fact.

**Mr. Burrowes.**—My lords, it is impossible, that Mr. Attorney-general can know every thing which passes. Many occurrences took place upon the last trial before his eyes, of which he did not know any thing; but I deny, that in making this challenge we have been influenced by any such motive as has been suggested.

**Mr. Gould.**—Will the counsel for the crown  
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consent that the case shall be tried by any but twelve Orange-men?

Lord Chief Justice *Downes*.—The course is, to appoint two officers of the Court to try such a challenge as this.

Rowley Heyland, and Robert Hamilton, esqrs. deputy prothonotaries, were appointed the triers, and sworn to try the issue upon the challenge, and a true verdict give according to evidence.

Lord Chief Justice.—Gentlemen, you are to try the truth of the challenge, which will now be read to you.

[The challenge was here read to the triers.]

Mr. *Burne*.—My lord, we call upon Mr. William Kemmis, to give evidence to establish this challenge.

William Kemmis, esq. sworn.—Examined by Mr. *Burne*.

Your father, Mr. Thomas Kemmis, is crown solicitor?—Yes, and so am I.

You and your father are crown solicitors?—We are.

Do you know Mr. John Kingston James?—I have seen him, and know his person.

How long have you known him?—I have seen him very often; but have no intimacy with him.

When did you first see him?—The first time that I saw him was upon a trial respecting prisage, commenced by lord Ormonde, which Mr. James defended: that was the first time I saw him.

When did you see him last before this day?—I saw him yesterday.

Did you see him shortly before that?—I have seen him frequently in the street.

Did you see him in a house?—I did, at his own house, about a week ago.

Did you ever see him in any other house?—Yes, I saw him in William-street.

Where there?—There was a meeting of the corporation there, I sent in to him, and he came out to me.

Court.—Upon what day was that?—My lord, I do not exactly recollect the day; I believe it was last Friday se'nnight.

Mr. *Burne*.—Then you saw him at his own house and other places?—Yes; I called at his house, and not finding him at home, I went to William-street, and sent in for him, and he came out to me: and since that, I saw him at his own house.

Then you saw him at his own house, and at the Exhibition room?—Yes.

Did you see him at any other house?—I do not recollect.

Recollect, did you in that interval?—I do not recollect to have seen him at any other house.

Do you think, if you had, you could have forgotten it?—If I had had any conversation with him, I do not think I should have forgotten it; but I do not recollect to have seen him.

Do you recollect to have seen him last Wednesday?—I believe that was the day I saw him at his own house.

Do you take it upon yourself to say positively, that you did not see him in any other house last Wednesday?—I do not recollect; I went there to see him, and waited until he came in.

Recollect yourself, you know the situation in which you stand between the parties. I ask you to say, positively, whether you saw him in any other house upon that day?—I do not recollect, that I saw him in any house but his own, upon that day.

Now, Mr. Kemmis, you had a conversation with him at the Exhibition room?—I saw him there.

Did you intimate to him, why you wanted him?—I did.

He came out?—He did after some time.

You had a conversation with him?—I had about three words with him.

I will not ask you what they were, but did you say any thing to him relative to the jury?—I delivered him the venire, and gave it into his own hand.

You had some conversation with him, besides delivering the venire? that was not the only thing that passed? you said something to him?—I did.

It was relative to the venire or panel?—It was.

Very well, sir, have you seen him since that?—I did, as I mentioned, on Wednesday last.

But have you seen him besides that?—I have seen him here, and in the street.

Had you any conversation with him?—Not since Wednesday.

You delivered the venire on Friday, at the Exhibition room?—I did.

And you went on Wednesday last to his own house?—Yes.

You saw him there?—I did.

You waited for him?—I did sometime, until he came in.

And you had some conversation with him, when he came in?—I had.

What hour was it?—It was about four o'clock.

Did you wait long?—No, sir.

When you saw him on Wednesday, about four o'clock, had you any conversation with him, relative to the venire, or the panel?—I had.

You had delivered the venire to him before?—I had on the Friday se'nnight.

Then your conversation on the Wednesday was relative to the panel, the venire for which you had delivered on the Friday before; inform the Court, what was the conversation, or the purport of it?—The purport of it was, to request him to give me a copy of the panel, which he had returned to the venire, and which he positively refused to do. I thought I was entitled to a copy of the panel in a case of this kind, and I called upon him for it, or to re-

turn it to the office of the Court, both of which he refused.

Did you ask him further for it?—I did. During the conversation (I suppose I was with him about ten minutes) he said he was an officer between the king and the people; that he would keep the panel in his pocket, until he came to court this day; and would not give it to any person, until he was called upon by the Court.

What conversation had you with him on Friday se'n'ight?—It was short; I told him, this is the venire; that the time was short; and begged that he would lose no time in making his return: I told him, in the conversation at his house, that I did not care if the opposite party had a copy of the panel, or that all the world knew it; for I thought I was entitled to a copy.

Was that the whole of the conversation?—I do not recollect; it is possible I might have said, that if he did not choose to give a copy, the Court would desire him.

On Friday you told him to return the venire; what did you mean? did you mean that he was to return it to you?—No; but I thought it was to be returned to the court, on the first day of the term. On Wednesday I told him the return would be out, and desired him to look at the venire, which he did, and said, he did not care, and would not give any copy, or make any return until the Court desired him.

Did you intimate a wish to have a copy?—I claimed it as a right; he knew I was concerned for the crown, and in what character I claimed a copy.

Do you recollect any thing further to have passed?—I do not.

Upon the first day, at the Exhibition-room, do you recollect any thing further, as having passed between you?—I might have requested him.

So you might; but do you recollect whether you did or not?—If you ask me upon my belief.

I ask you, what passed?—It was a short conversation, and did not rest upon my memory: I believe I desired him to return his panel to the venire as soon as possible, and to let me have a copy of the panel.

Did you say that upon the first day?—I believe I did.

You told him to summon the jury?—No, I said nothing about summoning the jury; I told him to make his return, and to give me a copy of the panel.

Did the sheriff refuse it on that day?—He did not say any thing.

He did not then say, that he was an officer between the crown and people, and would not give a copy?—He did not say one thing or the other; he put the venire into his pocket, and I do not recollect his saying any thing.

Upon going to him on Wednesday, you thought he consented to give a copy?—I did not; I conceived he had time to make his return, and thought I was entitled to a copy.

He promised to give you a copy?—Upon my oath he did not make any promise.

Did he consent?—He did not say any thing about it upon the first day.

Did you ever ask him for a copy, but on these two days?—Not to my recollection.

The period is short; endeavour to recollect yourself?—I do not recollect; the refusal was so peremptory, that I thought it useless to ask him again.

Did you afterwards speak to him?—I might have saluted him in the street: but except the conversation which I have mentioned, I do not recollect any other.

Did you ever send to him in the interval, since Friday se'n'ight, for a copy of the panel?—The very day upon which I called myself, I had desired Mr. Carmichael to call upon the sheriff for a copy of the panel: I did not see Mr. Carmichael until the next day, and he told me the sheriff had refused to give it to him. If I had thought Mr. Carmichael had called, I would not have gone myself.

Mr. Carmichael is engaged in your office?—He is.

You did not wait to hear the answer which Mr. Carmichael might have got?—I had desired him, in the course of his walks, to call for the panel, and not having seen him during the day, I called upon the sheriff.

You thought it a matter of such consequence, that you called yourself?—The return of the venire was just out, and thinking I was entitled to a copy of the panel, I called for it.

Do you know of any other person being sent to the sheriff?—I do not.

Or having any communication with him?—I do not.

Did any other person, to your knowledge, apply to the sheriff?—There did not.

Did you, in any way, become acquainted with the panel, or any part of it, since Wednesday?—If you mean the panel I did not.

I do not; but did you, in any way, become acquainted with the names which were in it?—I did: I met several of the jury who told me they were summoned.

Do you recollect any of the persons who intimated to you, that they were summoned?

Mr. Attorney General.—Really, my lord, this is going into a discussion, of which it is impossible to foresee the termination; the charge by the challenge is, that the sheriff has returned a panel, at the instance and nomination of the solicitor for the crown; let them inquire into that, and we have no objection.

Lord Chief Justice *Downes*.—Mr. Burne will please to confine himself to questions which are pertinent to the issue.

Mr. Burne.—My lord, this witness, however respectable, must have some bias upon his mind, and I am ready to show, that the question is proper.

Lord Chief Justice *Downes*.—The declaration of a person stating himself to be sum-

monet on the jury, can be no evidence upon this issue. The question is, whether the sheriff has conducted himself legally, in making his return to the writ? whether the return is free from the imputation of having been obtained at the instance of the solicitor for the crown?

**Mr. Justice Day.**—Those declarations which are alluded to, may form objections to the individuals, as jurymen, but cannot bear upon the present issue.

**Mr. Burne.**—Do you recollect the names of any of the jurors who told you they were summoned?—I do.

Mention their names?

**Mr. Attorney General.**—This is quite a departure from the matter of inquiry. The challenge to the array is, that the sheriff did not perform his duty with impartiality, but returned the jury at the nomination of the party concerned.

**Mr. Burne.**—My object was, to prove the fact in issue, and if I were to disclose how I meant to prove the fact, my object might be defeated.

**Lord Chief Justice Downes.**—Surely the evidence ought to bear directly upon the sheriff.

**Mr. Burne.**—That is my object. Who are the persons who told you they were summoned?

**Mr. Attorney General.**—My lord, I must object to that question.

**Mr. Burne.**—The question is respecting a matter of fact, bearing, as I conceive, upon the issue. **Mr. Attorney General** may not see the bearing of the question; but I have my motive for putting it.

**Lord Chief Justice Downes.**—I do not see how a conversation between the witness and a third person, can bear upon the conduct of the sheriff:—that third person may be brought forward to depose, whether he knows any thing concerning the conduct of the sheriff; but this witness is not to relate what passed between him and other persons in the absence of the sheriff.

**Mr. Burne.**—My lord, if the objection be allowed, I cannot proceed.

**Mr. Justice Osborne.**—I cannot see how the question bears at all upon the sheriff.

**Mr. Justice Day.**—State in what manner the question bears upon the inquiry; we cannot allow a fishing examination of this kind to consume our time, when there is much important matter to occupy our attention.

**Mr. Burne.**—My lord, if I mention in what way it bears upon the issue, in hearing of the witness, my object may be defeated.

[The Court thereupon desired the witness to withdraw.]

**Mr. Burne.**—My lord, the way in which I conceive the question to bear upon the issue is this; I may, however, be mistaken:—suppose the witness swears, that a certain individual informed him that he was summoned, and the name of that person does not appear upon the panel, will not that be evidence to support the issue?

**Lord Chief Justice Downes.**—None in the world; for that person may have stated what was not the fact. It is taking the declaration of a third person, not upon oath, against the sheriff, in the absence of the sheriff. That person himself ought to be produced.

**Mr. Burne.**—My lord, we do not know him.

**Lord Chief Justice Downes.**—Do not know him! That is no reason for making his declaration evidence.

[Witness returned.]

**Mr. Burne.**—Do your lordships think the question ought not to be put?

**Lord Chief Justice Downes.**—We are all of that opinion.

**Mr. Burne.**—My lord, I give it up.

**Mr. Justice Day.**—There is no ground to show why the declarations of other persons should affect the sheriff.

**Lord Chief Justice Downes.**—Your own good sense must have told you, long since, that it was not relevant to the issue.

**Mr. Burne.**—My lord, I give it up.

*William Kemmis, esq.* cross-examined by  
**Mr. Attorney General.**

You have said, that on Friday se'nnight, you delivered the writ of venire to the sheriff?—I did.

Pray, was it not your duty, to issue the venire for the return of the jury?—Certainly it was.

When was the writ returnable to this court?—On the first day of term, as I think.

And it bore *teste* as of the last day of the preceding term?—I believe so.

Am I to understand, that you thought it the duty of the sheriff to return the venire upon the day mentioned for the return of it?—I did, when I had the conversation with him.

As in an ordinary case?—Yes.

**Mr. Burne.**—My lord, I beg pardon for interrupting **Mr. Attorney General.**—I wish to ask a question or two more of the witness. You said that you heard from some persons in the street, that they were summoned. Did you come to a knowledge of the panel, or any part of it, in any other way, between Friday se'nnight and this day?

**Mr. Attorney General.**—My lords, I object to this examination. If he got a knowledge of the panel from the sheriff, they may give that in

issue, and let it have what effect it may : but as to his getting a knowledge of the panel in any other way, it cannot bear upon this issue.

**Lord Chief Justice Downes.**—It may be a full answer to the question to say he got it from the sheriff.

Did you get any knowledge of the panel from any other quarter than from the jurors who spoke to you in the street?—Partly, I did.

In what other way did you get that knowledge before this day?—I got a list of names who, I understood, were to be upon the jury; some of whom are returned.

Were any of those persons called this day?—Some of them were.

From whom did you get that list?

**Witness.**—Am I to answer that question?

**Mr. Burns.**—Certainly you are.

**Mr. Attorney General.**—I think not; but it will be matter for the consideration of the Court: it is of no consequence from whom he got it, unless it was from the sheriff himself.

**Mr. Justice Daly.**—Suppose he says, he got it from the sheriff.

**Mr. Attorney General.**—I have no objection to his being asked that.

**Mr. Burns.**—From whom did you get the list?—I got it from sir Charles Saxton.

Have you that list now?—I have not.

Where did you see it last?—In Kildare-street.

In your father's house?—Yes.

In your father's possession?—In my own possession.

Then it is in your own possession?—I cannot say positively.

You cannot say, positively, but it may be in Court?—I cannot.

Give me leave to ask, upon what day you got that list?—It was on Friday last.

You got a list of the jury?—Not a list of the jury, but a list of names, some of whom are on the jury.

Now, Mr. Kemmis, can you recollect where you received that list?—I received it at the Castle.

Sir Charles Saxton holds some office there?—Yes.

He is under secretary, I believe?—He is.

Was it in his office?—No, it was in a room near it.

And you received it from him?—I think so.

Do you recollect what number of names were in that list?—I do not.

Can you take upon you to say, whether there were one hundred?—I do not think there was, nor near it.

**Mr. Kemmis.** I wish you would take the trouble of inquiring, whether it be in Court, or that you would send for it: Can you say,

there were fifty names in it?—I think there were fifty names in it.

Were there not more?—There might be more. I do not recollect them.

Do you recollect, whether there was any person present when you received this list, except sir Charles Saxton and yourself.—No, I do not think there was.

How did it happen to come into your possession? Did you go to sir Charles Saxton for the list, or did he send for you?—I was there about some business. I do not recollect exactly; and he gave me that list.

Did he know in any way, or had he heard, that the sheriff refused a list to you?—Not to my knowledge.

Were all the names in that list written in the same manner, without any marks annexed to any of them?—There were no marks, except the number annexed to the names, but I am not sure that they were even numbered.

You say, you last saw that list in Kildare-street?—Yes.

When did you see it last?—Yesterday.

Was that the last time?—It was.

Where did you leave it?—In my father's office in Kildare-street.

Will you have the goodness to look among your papers, and enable yourself to say positively whether it be in Court?—I did not put it among the papers.

Will you be pleased to examine your bag and see?—(After searching his bag)—It is not among the papers.

Did you get any copy made of it?—I did not.

Do you know whether any copy was made of it?—I was copying some of the names, but it was not copied through.

Did you ever shew it to any person?—I did not.

Before this day?—I did not shew the list.

Or the copy, or any part of it?—No, I think not. I asked questions, with regard to certain persons, but I did not shew the list.

From whom did you make inquiry?—From several persons.

Mention their names?

**Mr. Attorney General.**—My lords, if this examination can have any relevancy to the issue, let it proceed. Surely it is the duty of the solicitor for the crown to inquire into the characters of jurors who are to try the cause.

**Mr. Burrows.**—My lords, this examination is not only not contrary to law, but is absolutely necessary to the pure administration of justice.

In order to consider whether the evidence be relevant, or not, I agree, that it is necessary to consider what the issue is. It is an alleged collusion between the returning officer and the crown, through the medium of the solicitor for the crown, or any ministerial officer. If the sheriff gave an advantage to any party which was not warranted by law, the triers cannot hesitate upon the finding of their issue. Then how does it stand?—My lords, I really feel,

that I shall satisfy the Court, and that the attorney general himself should call for the inquiry. What appears? The sheriff affects a prudence—or a prudery—and he refuses to give a copy of the panel, or to make a return, which he was bound to do, to enable both parties to investigate the grounds of challenge to jurors. Why, there is evidence of rank duplicity and collusion—that the statement of the sheriff was a mockery—a pretence—a trick, and management, to enable the solicitor for the crown to make this excuse. What stronger evidence can there be, than facts tending to show that the statement made to the crown solicitor was false and unfair, that he affected to stand indifferent between the parties, and would not make a copy for one of them, but, forthwith, there comes a copy from the secretary's office. This, we rely upon, is evidence to go to the triers.

Mr. Justice *Daly*.—But the inquiry is, with whom do you connect the facts respecting particular jurors. The evidence does not appear to me to go to the issue before the Court.

Mr. *Barton*.—My lord, I wish to suggest this;—the question is, was there any communication with any person respecting the jurors returned upon the panel? The challenge is, that the jury was returned at the instance of the solicitor for the crown. If he interfere at all in that return, the issue must be found for the traverser. When is the panel returned? Only this day: and between the time of the delivery of the venire, and the return, a list gets into the hands of the solicitor for the crown, and he makes inquiries respecting the persons whose names are in that list. Is not that interfering with the return of the panel? The confusion arises from supposing, that the return was previously made. The return might have been made to sir Charles Saxton: but, certainly, was not made to the Court; and it is from the conduct of persons in the interval, that we are to show an interference with the return, which is directly relevant to the issue now depending between the parties.

Mr. *Attorney General*.—Do your lordships think, that the witness ought to answer the question?

Mr. Justice *Osborne*.—What is the exact question?

Mr. *Burne*.—My lord, the witness said, that he had a communication respecting this list. I ask him, with whom he had that communication.

Mr. Justice *Daly*.—That appears reasonable.

Mr. *Attorney General*.—Can the conversation between the witness and the person with whom the witness communicated, relative to the qualifications of jurors, have any bearing, remotely or otherwise, upon the issue?

Mr. Justice *Osborne*.—There is only one way, in which, as it seems to me, it can. The

return not being made till now, any question tending to show, whether there was any change made, in any one of the names, between Friday and this hour, may bear upon the issue. All the particulars cannot be examined into at once, but it may be shown, that particular names, which were not upon the panel upon a former day, are on it now.

Lord Chief Justice *Downes*.—There is a possible mode of bringing it home to the sheriff.

Mr. *Johnson*.—There is more than the sheriff concerned. Two parties are charged, the sheriff and the solicitor.

Mr. Justice *Osborne*.—It may, by possibility, be brought to bear upon the issue: I do not say that it will.

Mr. *Burne*.—With whom had you any communication respecting the names in sir Charles's list?—I had a communication with one of the aldermen.

Mention his name?—Alderman Carleton.

Had you with any other?—I might have asked several whom I met, respecting the names appearing in the list.

Do you not recollect the name of any other?—Yes, I asked Mr. Hall some questions.

What Mr. Hall?—I do not know his Christian name.

What is he?—He is an attorney; he had an office in the city.

You mean Mr. Hall, of St. Andrew-street? Was he not solicitor to the police establishment?—Mr. Hepenstall, I believe, was, and Mr. Hall lived with him.

Do you recollect the name of another person with whom you communicated?—It is impossible for me to recollect.

Do you mean to say, you do not recollect?—I do not recollect.

Are all the names which are in that list included in the present panel?—I do not think they are. There are more names in the panel, than were in the list.

But are all the names which are in the list, now in the panel?—To my recollection they are, as I heard them called.

Can you send for the list?—There is no person let into the office, except my father.

You can send the key, and have the list brought?

Mr. Justice *Osborne*.—You may examine to the contents of it.

Lord Chief Justice *Downes*.—Or shew that you served a notice to produce it.

Mr. *Johnson*.—We did not know of it: the matter came out incidentally on the examination.

Are you certain, that all the names in the list are upon the panel?—I cannot be certain without comparing them.

Mr. *Burnes*.—My lords, this is matter of very important consideration; it concerns the

purity of the administration of justice, and the return of jurors.

Lord Chief Justice *Downes*.—It would be very desirable to have the paper, but I regret the loss of time.

Mr. *Thomas Kemmis*.—My lord, I have the list, and will produce it.

[The list was produced, and handed to the witness.]

Is that the original list?—It is.

Mr. *Burne*.—My lord, we call upon Mr. *Thomas Kemmis*, to be sworn.

*Thomas Kemmis*, esq., sworn.—Examined by Mr. *Burne*.

You produce this list?—I do.

Where did it come from?—Out of my pocket.

How did it happen, that you searched in the desk for it?—I did not really recollect at first, that it was in my pocket.

What time did it get into your pocket?—I dare say I have it these two days.

(To Mr. *William Kemmis*.) Are all the names in the panel which are in the list?—I cannot tell without comparing the list with the panel.

What is the first name upon the list?—The first name is sir Thomas Gleadowe Newcomen.

He is not on the panel?—I believe not.

Who is next?—Mr. Goff.

Who is next?—Mr. White.

He is not on the panel?—I believe not.

Mr. *Burrows*.—My lord, the best way would be for the officer of the Court to hold the panel in his hand, and compare it with the list, while it is read by the witness, and in doing so, he will have to attend to two things; first, whether there are any names in one, which are not in the other; and secondly, whether the names that are in both, stand in the same order.

[This was accordingly done, and it appeared, that there were fourteen names in the list, which were not in the panel—that there were one hundred and fifteen names in the list, and one hundred and twenty in the panel, and that there was a considerable inversion in the order.]

Examination of Mr. *William Kemmis*, resumed by Mr. *Burne*.

Do you know in whose hand-writing that list is?—I do not.

There are numbers annexed to particular names, and pencilled marks; who made these numbers?—I did.

Do you see any other marks to the names?—I do.

Who made them?—I might have made some of them, and my father made the rest.

It would seem unaccountable, that you can swear, positively, to your father's marks, and not to your own?—It is not hand-writing; it is

a mere mark, and therefore I cannot swear to it.

How many different kinds of marks are there?—There are numbers, crosses, and strokes.

All the writing which is added to the name, is by your father?—All that I see of writing is my father's.

What was the meaning, or purpose, for which you annexed marks and numbers to the names?—To see that they were, in my mind, proper, loyal men.

Is not the cross the mark of loyalty?

Mr. Justice *Day*.—This is wandering very much from the issue.

Mr. *Gould*.—My lord, the return was only made this day; and these marks were made before, which shows the management that has taken place about it.

Mr. *Burne*.—Why did you put numbers to each of the names?—In making abstracts for myself, and my father, I may have numbered them.

For what purpose did you make abstracts?—For the purpose of making inquiries concerning them?

There are the numbers, 1, 2 and 3; how did it happen that instead of the No. 4, you jumped to that of 27?—I cannot say why.

When did you make that number?—I do not recollect particularly.

It must have been since Friday. Was it on the day you got the list from sir Charles?—I believe it was.

When did you make the last number?—I cannot recollect.

Good God, sir, you got the list on Friday, and do not recollect the time. Two days only have intervened, and you may take your choice: Was it on Saturday or Sunday?—I believe, I put some numbers to it yesterday.

How did it happen that you went from No. 3 to 27?—I cannot recollect exactly, why I did it.

Do you believe, you put it there yesterday?—I do not think I did.

Then it was before yesterday?—I believe I put it, when I got it.

What figure did you put on the list yesterday?—I cannot tell; they were put on it different times.

Why prefix 27 to the name of Frederick Geale?—It might have been on account of a list my father had.

Then your father has another list?—He has part of this.

When did you give your father a copy of any part of this list?—I read out some of the names for him, and he took them down.

You said, you had no communication with any person respecting the list, except with alderman Carleton and Mr. Hall?—I meant to except my father, he was in the same office.



Why does No. 4 come after No. 27?—I cannot say.

You put it there?—I believe so.

It was either on Friday, or Saturday, or yesterday; and you cannot say why you put it there?—They were according to a list which my father and I were making.

And it refers, I suppose, to the order in which you and your father were making out the list; where is that other list?—I dare say my father has it.

Mr. Burne.—I beg to ask Mr. Thomas Kemmis a question. Where is that list which your son says you have?

Mr. T. Kemmis.—Am I bound to answer that question? I am sworn to keep the secrets of the crown.

Will it prejudice the party?—I will not determine that.

Mr. Gould.—You had better withdraw, and consult some of the counsel for the crown, whether you should answer?—No, sir, I am as good a judge of that, as you are.

Mr. Burne.—Do you think this a secret of your client?—Every thing which comes to my knowledge respecting the conduct of this prosecution, I think I am not bound to disclose; at the same time, if the Court order me, I will answer the question.

Mr. Burne.—My lord, the question is, where is the list which he and the son made out, as is stated by the son?

Mr. Justice Day.—State how the question applies to the issue;—for I have been at a loss, this half hour, to see how the examination bears upon it.

Mr. Burne.—My lord, that is not the ground upon which Mr. Kemmis puts the objection: he knows the relevancy of the question.

Mr. Attorney General.—As far as the crown is concerned, I advise Mr. Kemmis to answer any question, whether he, directly or indirectly, nominated any person to be inserted in the panel, or corrected it, or to have any names omitted, or that any practice was used to procure a return of the panel, or to invert the order of names in it: but if the gentlemen persist in rapackng the conduct of the solicitor for the crown, as to the mode of making inquiries respecting persons, who, he was informed, were to be on the panel, I must object.

Mr. Justice Day.—If the witness negatives what you now state, he has a right to say, that he shall not answer farther.

Mr. Attorney General.—My lord, I permit him to answer to that:—but they have no right to inquire into his motives, or from whom he made inquiries. The sheriff may be examined—Sir Charles Saxton may be examined—whether any influence was used di-

rectly or indirectly, with respect to this return;—whether it was suggested, that any man should be put on the panel, or left off. With respect to that, we defy all investigation. But the inquiry sought to be persisted in, is not only not for the purpose of this issue, but goes to affect the right of the client to have his secrets kept by the solicitor; they are the proper secrets of the client, and cannot be disclosed by those whom he has employed. Let the counsel on the other side ask every question that leads to the point directly in issue. But as to the instructions of the solicitor, or what passed in his office, it is striking at the foundation of all that confidential intercourse which exists between counsel and client—between attorney and client,—if the Court will not interpose, and make the distinction.

Mr. Solicitor General.—My lords, I apprehend, that the objection to answer is perfectly well founded, as the privilege of the client, whose counsel or attorney is called as a witness. In the present case, it is the anxious wish of the counsel for the crown, that there should be a most jealous investigation of the matter of the challenge—namely, that this panel was nominated by the solicitor for the crown,—or that any collusion was used in the formation of it, between the sheriff and the solicitor for the crown,—should be investigated and probed to the bottom;—and I speak the opinion of us all upon this subject, when I say, that if the counsel on the other side should now drop this inquiry, we will institute and persevere in it. We claim no greater privilege for the solicitor for the crown, or for his client, than the law gives to every client—and for the client to the solicitor. It is the duty of a solicitor or attorney of a party, by every means, to prepare himself to challenge individual jurors, when the trial shall come on. If, in that preparation, matters are communicated to him, of which he takes notes, and does not think himself at liberty to disclose them—surely an inquiry into them is not *ad idem* to an inquiry, whether the panel was *correctly formed* or not.—So far as that inquiry can extend we make no objection;—whether there was any interference, directly or indirectly, in the formation of the panel—let the examination take its range.—But if the solicitor for the crown obtained a list—true or incorrect—of the names of persons who were probably to be returned on the panel, and conferred with his partner, and they consult together, with respect to what individuals they will put by, or whom they would wish to have upon the jury in preference to others—that is matter in the proper discharge of their duty, and whatever comes to their knowledge in pursuit of their inquiries in that respect, is not a subject of judicial inquiry. Every thing which can be examined into respecting the formation, or preparation of the panel, is open to investigation. But after a copy or list of the panel, formed by the sheriff, has been obtain-

ed by the solicitor, and he applies to other persons for information, whether such a man upon the panel is a proper juror, or is objectionable—can it be said, that the solicitor is bound to disclose all that passes, or his own observations upon the information which he so acquires?

*Mr. Burrows.*—My lords, I wish to make an observation upon this point. We are now upon a subject which regards the purity of the administration of public justice; and it is said, that there is a wish to have it investigated. But if they be sincere, why not exert themselves to arrive at all knowledge upon the subject? With an avowed candour, they have disclaimed availing themselves of the privilege, and say, they wish for a fair investigation. But my learned friend, the solicitor-general, whose ingenuity is equal to any thing, but is not equal to his object in this particular, felt it necessary to object to the witness giving an answer, upon the ground that he was acting throughout in the discharge of a legal duty. If that were so, why keep it back? We are not going into an investigation respecting any individual to whom we may object; but we are now filling up a chasm, and if it shall be filled up as I expect, there is not a rational man—an unprejudiced man, who will not be of opinion that the jury has been impanelled by the procurement of persons concerned on behalf of the crown; and if they pretend it was not, I say that they might as well jumble letters in a hat, and expect that words should come out, as such an arrangement as appears.

What does appear? The panel is not returned until this morning—part of it is not summoned until late on Saturday. Then examine further, and if it appears, that there came out of an office in the Castle, a list of jurors before the panel was returned by the sheriff, in which there are one hundred and fifteen names, one hundred and thirteen of which are consistent with the very panel; fourteen of these names are left off, and not summoned; the order and arrangement of the rest are inverted, for a purpose obvious to common sense, and private marks are annexed to some of the names by one of the solicitors, and his father and partner had another list numbered in a similar manner, so as to agree and identify with the very panel, and if so, it amounts to a combination altogether miraculous; and therefore, unless the candour of the counsel for the crown stands in the way of inquiry, and the prosecutors have some peculiar prerogative which denies investigation, they will not withhold evidence from the respectable gentlemen who are appointed triers, and who, upon the evidence being given, will not suffer the traverser to be tried by a jury from this panel.

*Mr. Justice Osborne.*—What is the paper which you desire to have produced?

*Mr. Burrows.*—My lord, it is stated by the witnesses, that they made out a list conjointly,

and the elder Mr. Kemmis declines to answer concerning it.

*Mr. Justice Osborne.*—I wish to understand the question exactly, before I attempt to give an opinion. You contend, that the list, which has been produced, contains upon the face of it, matter, affording an inference of management with the sheriff.

*Mr. Burne.*—That is not precisely so.

*Mr. Justice Osborne.*—If you do not contend that, then the reasoning, upon which I was about to determine, fails.

*Lord Chief Justice.*—A list is produced, which has certain private marks made by the witness and his father, being together in the same office, and being solicitors for the crown. Then, the elder Mr. Kemmis is asked respecting a list which was made from the other, and, as I understand, his objection is this—That the list was made by him, as one of the solicitors for the crown, for their own instruction, to enable them to make inquiries respecting the jurors, and to make challenges. You have the original paper in evidence now, and make what use of it you may; but with respect to the other list taken from it, with their own private marks, it cannot be forced from them. You may ask as to the nature of the papers; and if it bears upon the matter of the challenge, it is offered to you with that view. But the private remarks or observations made by the solicitor for the crown, for the purpose mentioned, cannot be given in evidence.

*Mr. Goold.*—My lords, the question is, whether Mr. Kemmis is protected by any rule of law, in withholding evidence to which the subject is entitled?

*Lord Chief Justice.*—That is not the question.

*Mr. Goold.*—My lord, is the witness protected by any particular privilege?

*Lord Chief Justice.*—The very paper itself might shew, whether he is bound to answer or not; and the objection would be of no avail, after it was produced.

*Mr. Goold.*—My lord, in the case of *Wilson v. Rastall*\* this subject was discussed, and it was determined, that every man was bound to give evidence of matters which came within his knowledge, except such as he acquired in a particular character. If this were a civil action, and Mr. Kemmis had been served with a *subpoena*, he would be bound to answer.

*Lord Chief Justice.*—Suppose he had made observations upon the paper by the advice of counsel, would he be bound to answer?

*Mr. Goold.*—My lord, let him say, that I was done by the advice of counsel.

*Lord Chief Justice.*—Suppose then, it was

an observation of his own, with a view to the conduct of the trial, that is equally protected.

**Mr. Gould.**—The charge made by the challenge is, that there was tampering in the formation of the panel. What we are now examining into is part of the *res gesta*:—How can we shew tampering, or management, without proving the acts of the parties? It is not to be proved merely from an interference with the sheriff, but the conduct of the solicitor, who may be examined to the acts done by himself.

**Mr. Justice Day.**—Suppose the witness produced the paper with the marks and observations, it would still be necessary to ask him, with what view he made them?

**Mr. Attorney General.**—My lords, we have no objection to the witness being asked that question.

**Mr. Burton.**—My lords, we do not desire to ask that question.

**Mr. Justice Daly.**—The list may have remarks concerning jurors which it would be improper to disclose, and therefore, to see whether they ought to be disclosed or not, the witness may be asked, whether they were made with any other view than to ascertain, whether there were objections to individuals upon the panel, and if he shall answer that in the negative, surely, the inquiry should not go further.

**Mr. Burton.**—We are entitled to know this—whether there was an improper interference with the panel;—and we are entitled to see the order of the names in any list which was made out. Suppose that the list which we now require to be produced, corresponds with the panel, and that it was made out before the sheriff returned the panel, will not that be evidence for the triers? It is admitted, that observations have been made respecting particular individuals upon the panel, which observations they refuse to disclose.—But, independent of those observations, there are names in the list and numbers, and we are entitled to see them, as we allege that there is an extraordinary coincidence between them and the panel returned to the writ.

**Mr. Justice Osborne.**—That was what I was suggesting some time back, but Mr. Burne did not seem to agree. I thought it was contended, that the very inspection might furnish the inference which has been relied upon: at the same time, I agree with my brother Daly, that the paper should not be taken out of the hands of the solicitor for the crown, when it might disclose observations which have been canvassed between the two gentlemen who are solicitors for the crown. But the attorney-general may look at the paper, and see whether it contains such observations, or not;—and if it does not, it will be consistent with the candour which has been avowed, and may facilitate the inquiry, to produce it.

**Mr. Attorney General.**—My lords, I have no objection to any course which the Court may direct.

**Lord Chief Justice.**—Let it be ascertained for what purpose the list was made, Mr. Kemmis, this paper which is inquired after.

**Mr. Burne.**—My lord, I feel great reluctance to interrupt the Court; but I hope the Court will not prevent my examination.

**Lord Chief Justice.**—Put such questions upon this part of the inquiry, as will obtain such a history of the paper as will enable us to determine whether it should be produced or not.

**Mr. Burne.**—My lord, I was asking Mr. Kemmis, the elder, and will persevere in that question, till it is answered—Where is that list to which your son alluded?—I have it:—I have a list which was made from the panel, upon which I have made private observations, for the purpose of directing the challenges, and for no other.

**Mr. Justice Daly.**—You said the list was made from the panel, what panel?—I mean, the list which I produced just now to my son. I have no objection to produce the list made from it, provided the counsel do not require to see my memorandums. There is the list, and the names are all in my own handwriting.

**Mr. Burne.**—Is that the list to which your son alluded?—It is; he was present when I took it down.

Have you any other list in your pocket?—I have the list of some names which I took down while the clerk of the crown was calling the panel.

(To Mr. William Kemmis.)—Is that the list to which you alluded?—It is.

Are there observations in writing upon it?—There are not: but there are marks annexed to some names, and none to others.

**Mr. Burne.**—My lord, as there are no observations made in the list, there can be no valid objection to the production of it.

**Mr. Attorney General.**—It is for the Court to decide, whether the private memorandums of the crown solicitor can be given in evidence, against his consent.

**Mr. O'Connell.**—This witness has said, that there is no private observation appearing in the list; and where no memorandum exists, it is a little strange to contend, that it is in this case a legal objection to the production of the list.

**Mr. Attorney General.**—There are no observations, it is true, but there are certain marks which ought not to be disclosed. It is a general right that is in question, it is the privilege of attorney and client.

**Mr. Johnson.**—If there be a coincidence be-

tween the names in the list and the names in the panel, before the latter had legal existence, it will be evidence to shew management in the preparation of the latter; and when that is stated, can it be possible, that the Court will conceal the fact from the triers? We do not want to see the private marks, or to what names they are affixed:—we shall be satisfied, if Mr. Bourne, the officer, will copy the names, without the marks; or let him hold the list, and examine how the numbers and names correspond, without mentioning any thing of the private marks.

[This was accordingly done, and the officer read the name of sir Thomas G. Newcomen.]

Mr. *Burne*.—Is there any number annexed to this name?—

Mr. *Bourne*.—Yes, No. 1.

Look at the other names, and see if the pencil marks correspond?—They do not. Frederick Geale is No. 4, and so is Luke White. Benjamin Ball is No. 6, and so is Mr. Roche.

Look at the panel, and reckon down to the name Joseph Atkinson, how is he numbered?—He is 39 in the panel, and 38 in the list; but although numbered 39 in the panel, he is 38 in point of fact.

What is the next name?—Robert Ashworth is.

What number?—Forty.

Is he the 40th person, in fact, upon the panel?—No, he is No. 39.

(To Mr. *William Kemmis*).—What number is he in sir Charles Saxton's list?—Number 18 and 39.

Look at the name Thomas Meade in sir Charles Saxton's list, how is he numbered?—I cannot make it out, it is either 20 or 40.

(To Mr. *Bourne*).—What number does Thomas Meade stand on the panel?—Forty.

Now Mr. Kemmis, can you doubt, whether the number in sir Charles's list be 40, or not? which do you believe it is, and which was it intended for, or which is it most like?—It is most like 20.

What was it intended for?—If it was intended for any thing else, it must be 40.

Look at the name of Litton, what is the number in sir Charles Saxton's list?—Forty-one.

(To Mr. *Bourne*).—What number is he in the panel?—Forty-two.

How is he in point of fact?—He is forty-one.

Look at the name of Tindal, what number is he in the panel?—He is No. 50.

(To Mr. *William Kemmis*).—What number is he in the list?—No. 50.

What number is Minchin Lucas in the list?—He is No. 51.

(To Mr. *Bourne*).—Does that number correspond with the panel?—It does.

(To Mr. *William Kemmis*).—Look at the

name James Nugent, what number is he on the list?—Fifty-two.

Look at the panel, and see what number is next to Minchin Lucas?—It must be 52.

Look, is there not an erasure there?—There is.

Was not the name of James Nugent written there?—I cannot say, it is so obliterated.

Can you form no belief?—No.

Then it must be left to the Triers. Now Mr. William Kemmis, I have shewn, that the numbers prefixed to names, to the amount of five or six, correspond with the names and the numbers in the panel; I wish to know from you, and I do not care what answer you give my question, do you believe that this extraordinary coincidence has happened either by design, or by accident, or a miracle?—I cannot form an opinion upon that; the sheriff is the only person who can account for it.

Some of the names, as they are entered in sir Charles Saxton's list, correspond with the actual situation in which they stand in the panel, was that by accident or design?—I cannot say.

You made the numbers?—I made the numbers upon the paper, but not from the panel.

I do not say you did; but was the coincidence between them occasioned by accident or design?—I do not believe that it could have been by accident.

After all that you have heard, the answers that you have given, and the observations which have been made, can you explain for what purpose you made those figures?—I made them, in company with my father, for the purpose of challenging the jury.

Let me ask you, sir, with deference and respect, you say the coincidence was not by accident, and therefore must have been by design, as it is manifest it was, what was the design?—To make a list, for the purpose of challenging the jury.

In the name of common sense, how did putting No. 27, after No. 3, assist you in challenging the jury?—In the first place, this list is not all numbered.

Pray will you favour me with the sight of that miraculous list?—No.

Mr. Justice *Daly*.—There are private marks upon that list, made for particular purposes.

Mr. Justice *Daly*.—But these marks are unintelligible.

Mr. *Burne*.—My lord, we only want the names, the order in which they stand, and the numbers annexed to them.

Mr. *Burton*.—My lord, there is no force in the objection which is made to our seeing the list. It appears, that there are no memorandums written upon it; but there are particular marks prefixed to particular names; what they mean, *non constat*, for what purpose they were made is not material, nor do we wish to know.

Lord Chief Justice.—All the information

which you profess to require, and we presume you want no more than you profess, is that of having a list detached from the private marks

Mr. *Burton*.—My lord, these very marks may tally in the order in which the names are upon the panel: and may give information to the triers.

Mr. Justice *Osborne*.—Mr. Kemmis said, that the marks were for the purpose merely of assisting him in making challenges, and not for any other purpose.

Mr. *Burrows*.—What the witness said is a mystery; and the triers should know whether these marks were made for the purpose of challenging, or some other purpose.

Mr. *Attorney General*.—If they want the names which are in Mr. Kemmis's list, let them be read in the order in which they stand, and with the numbers which may be annexed to them.

Mr. *Wallace*.—But we have a right to the paper itself; it may be in the hand-writing of the sheriff, and we cannot tell that, until it be produced.

Lord Chief Justice.—But the witness says, it was a private regulation between the solicitors, for their own conduct, and I do not find, that the leading counsel requires that to be given in evidence.

Mr. *Wallace*.—But the witness has no right to withhold the evidence, and we have a right to show whose hand-writing it is.

Lord Chief Justice.—You may ask him whose hand-writing it is.

Mr. *Wallace*.—We may prove it by other evidence.

Mr. *Burton*.—My lord, let the officer of the Court make a copy of the names leaving out the numbers.

Mr. *Attorney General*.—That was offered to you half an hour ago.

Mr. *Burne*.—(To Mr. *William Kemmis*.) You have said, that the numbers were annexed to the names with a pencil, to assist you in challenging the jury?—Yes, in making out a list to have in Court, from which to be prepared to challenge the jury.

I wish you to explain, why the number 27, put after No. 3, assisted you in your challenge to the jury?—The numbers were made backwards and forwards.

By you?—Yes; but not at one time.

But they were made, only two or three days ago, and I now ask you to say, how did putting No. 27 before No. 4, aid you in respect of the challenge?—I cannot answer that now; I made out part of the list; my father made out another part, and the figures were altered backwards and forward.

Mr. *Heyland*.—Am I to understand you, now to say, that you cannot explain how that figure would assist you in challenging the jury?—I cannot answer, unless I see the panel.

Mr. *Burne*.—Could you have made those remarks on Friday and Saturday, for any sensible reason, without seeing the panel? did the panel assist you?—No, it did not: I never saw it until this day in court.

Take the panel now, and say how it would assist you in making a challenge by having No. 27 in your list instead of No. 4; what name is 27 upon the panel?—Thomas Prentice.

And in the list, Frederick Geale is 27; how will that assist you?—The list which I made, and that of my father might not be the same in point of numbers.

Look at the name Robert Ashworth, what figure is annexed to that name in the list?—Thirty-nine.

How did that assist you in challenging the jury?—If I saw the panel I could tell.

Look at the panel, and say how it would assist you?—If they appeared in the same order it would assist me at once, by referring to my list.

What number is Robert Ashworth on the panel?—It appears No. 40 on the panel.

You said, that the numbers annexed coinciding could not be accidental, what was the design of adding No. 39 to the name Robert Ashworth?—With regard to the number, I cannot tell, but as to the name, it was to make inquiries respecting the man.

But, I ask you to state the design respecting the number?—I cannot say more respecting that.

Is not the first name which was on the panel erased? Look at it.—I believe so.

Was not that name sir Thomas Gleadowe Newcomen?—I think it was.

Have you any doubt that it was the first name?—No.

Have you any doubt that it was altered after the panel was numbered?—I have not, and the name of sir Thomas Gleadowe Newcomen being erased after the panel was numbered, makes a difference all through it.

Look again at an erasure, where I say the name James Nugent was; do you not believe that name was erased after the panel was numbered?—I think it was.

Court.—What is the number?—If the name were left on, it would be number fifty-three.

Mr. *Burne*.—What number is the name James Nugent in your list?—No. 52.

Do you not believe, that the name James Nugent was there in the panel?—If you say it was there, I will believe you.

You say you got the list from sir Charles Saxton in the Castle, on Friday last; about what hour was it?—It was late in the day, I believe about five o'clock.

Were you waiting for him?—I was, some time.

Before he came in?—I cannot say, for I was in another room.

For what purpose did you go to the Castle that day?—I went upon some other business; I cannot now say, exactly.

Mr. Justice *Day*.—Were you sent for, or did you go of yourself?—Sir Charles Saxton sent for me, or my father, about some business of a living, as I believe, but I had no intimation of the list of the jury, until I went there.

Mr. *Burne*.—Was any person present when sir Charles Saxton handed you the list?—Not that I recollect.

Do you know in whose hand-writing this list is?—I do not.

Mr. *William Kemmis* cross-examined by  
Mr. *Attorney General*.

Mr. Kemmis, you applied to the sheriff for a copy of this panel?—I did.

That was on Wednesday last?—Yes.

You mentioned, that on that day the venire was returnable?—I understood it was returnable on the first day of the term, being the next day.

Did you apply to the sheriff for a copy of the panel, as considering it a matter of right on the part of the solicitor for the crown?—I did.

And not as a matter of favour?—Certainly not.

The sheriff refused to give you a copy?—He did.

Do you believe that refusal was a pretext, and that he meant to give you a copy? or that he was speaking truly and fairly?—I thought he was speaking fairly and truly.

Did you obtain any copy of the panel from the sheriff?—I did not, either by myself, or any other person: I got no other list, but that which is produced.

Do you believe, that the sheriff gave a copy to any person for your use?—I do not believe he did.

Did you or your father, to your knowledge or belief, or any person acting for you, intimate to the sheriff, or suggest to the sheriff, the name of any juror to be returned, or the name of any person liable to be a juror, to be omitted?—Upon my oath, I did not, nor did my father, or any other person, to my knowledge or belief; and when I saw the list, I expressed my surprise that there was not a member of the city in it.

The first day upon which you saw any copy or list purporting to be a copy of the jury, was on Friday last?—It was.

Had you seen any list of the jury prior to that day?—Upon my oath, I had not.

What was your object in applying to the sheriff for a copy of the panel?—For the purpose of being enabled to make objections to such of the jury, against whom it might be suggested to me, that objections lay.

Then, upon Friday you got a list purporting to be a copy of the panel?—I got a list of names which it was supposed were to be summoned.

That is the list which you mentioned, as coming from sir Charles Saxton?—Precisely.

Was that the list upon which you made your figures and marks, and from which your father made his list?—It is the very same.

I ask you, upon your oath, was it your intention, or that of your father, in making those figures and marks, or were they made with a view of having an application made directly or indirectly, to the sheriff, as to the panel which he was to return?—Certainly not.

Did you, or your father, to your knowledge or belief, directly or indirectly, communicate to the sheriff, or any person about him, your view or wish respecting the jury or the list which you had got on Friday?—Never.

Have you any reason whatever to believe, that the sheriff returned the jury, or any part of it, upon your nomination or that of your father?—I have not; but on the contrary the sheriff said, that he was in such a critical situation that he would not give a copy to either of the parties, and I told him at the time, that I did not care if the opposite party had a copy of it.

Did you, or your father, or any other person, as you believe, suggest to the sheriff to put any names into the panel, or to omit any, or to change the order of them?—Certainly not.

When you made the figures upon that paper, which has been produced, you have positively sworn, that you had not at that time seen the panel?—I certainly had not.

Had you seen any thing, but the list, which was furnished by sir Charles Saxton, and the list which was made from it by your father?—None other.

Upon your oath, with what view were these marks made by you and your father? Was it with a view to the sheriff altering the panel, or with a view to yourselves in making objections to individuals of the jury?—It was only for our own convenience; with regard to the sheriff, we had no communication directly or indirectly.

Did you show your list to any person, with the intention of communicating to the sheriff what your wish was with regard to the jury?—Certainly not.

Recollect particularly when it was that you and your father made these marks upon the paper?—From the time when I received it until last night, as I received information respecting the jury.

You mean from Friday last?—Yes, I had no other list, and I did not get this till Friday last.

Mr. *Burne*.—You said that you made observations upon the list, as you received information from time to time, did you make any remarks upon it yesterday?—I think I did; I might have made some.

Can you say positively whether you did yesterday?—I do not recollect positively.

Did you see it yesterday?—I think I did, in the office.

Mr. Heyland.—I have taken it down, that you said you did not show the list to any person with a view of its being communicated to the sheriff?—I did not show it to any person, for the purpose of any communication with the sheriff; but for the purpose which I mentioned, and that only.

Mr. Thomas Kemmis again examined by Mr. Burne.

Did you at any time see Mr. James?—I have seen him, but never spoke a word to him.

Mr. Thomas Kemmis cross-examined by Mr. Attorney General.

Was there any application made by you, or to your knowledge or belief, by any person authorised by you, to Mr. James, the sheriff, to return any person upon the panel, or to omit any person liable to be returned?—Never.

Or to any person through whom Mr. James was to be applied to?—Certainly not.

Was there any application made to the sheriff to change the order in which the names stood upon the panel?—Not to my knowledge.

Do you understand the question? I ask you, was there any application to the sheriff to change the order of the names, or to do any thing but what he might choose himself?—Certainly not.

When did you see a copy, or a list purporting to be a copy of the panel?—I saw that list on Friday last.

And not before?—Certainly not.

You made a copy of, or an extract from it?—I did.

For what purpose did you make it?—To enable me to inquire, whether it would be proper to challenge any of the persons so returned upon the jury.

Had you any intention, directly or indirectly, that such matter should be communicated to the sheriff?—Certainly not.

Did you show the remarks which were made by you upon the list to any person?—I did not.

Did you take any step whatever to procure the sheriff to make any alteration in the panel?—I never did: I never spoke to him; and I considered it my duty, to inquire after every name upon the panel, in order to ascertain, whether I should challenge or not.

Mr. Thomas Kemmis re-examined by Mr. Burne.

You prepared a list, of which we have got a copy?—I did.

What was your object in numbering the names upon that list?—My son called out the names; I never looked at his list, but wrote the names down as he called them.

Look at the list which he had, and also look at your own, and say whether you do not believe, that the order and the numbers in your son's list, correspond with the order and the numbers in your own?—I believe they do.

Sir Thomas Gleadowe Newcomen is the first on both lists?—Yes.

The hon. Price Blackwood is second?—Yes.

Mr. Goff is third in both?—Yes.

In short, without going through all the names individually, the list which you made, and that which your son had got, correspond?—They do.

Was any mark annexed to the name of Lake White, for his name is not in the panel but is in the list, and I wish to know whether there be any mark annexed in the list?

Mr. Attorney General.—My lord, I must object to the witness answering this question.

Lord Chief Justice.—It cannot be asked.

Mr. Burrows.—My lord, the Court is not in possession of the object for which the question is asked; we say, that a list was prepared for the purpose of having the panel altered; we allege, that there are fourteen names altered; and will it not be a fact to go to the triers, to enable them to judge, whether such an alteration took place, and also, whether the persons concerned might not have so acted, as to prevent particular jurors named in the panel from being summoned?

Mr. Kemmis.—My lord, sir Charles Saxton did not see this list, nor does he know of any list which I made.

Mr. Gould.—But, my lord, the question is, whether there was any mark affixed to any of these names, or omitted to be affixed, with a view to prevent those jurors from being summoned.

Mr. Kemmis.—I never put any mark to a name, or omitted to put a mark, for that purpose.

Mr. Gould.—We do not require the knowledge of the crown solicitor of the names upon the panel to support our objection, but a potentiality of interfering with the panel; and this point has been decided by a case which occurred upon circuit, before Mr. Sergeant Moore, where it appeared that two of the names were annexed within a day of the assizes, and sergeant Moore said, there was ground for imputing corruption or partiality.

Mr. Sergeant Moore.—In that case, an entire day was not consumed in the inquiry, but in twenty minutes it was ascertained whether the party did, or did not interfere with the panel; and it was proved that there was a direct interference by a party having an interest in the cause.

Lord Chief Justice.—The witness says, that the marks were made for his own use, and that they were not shown to any person; how can they be evidence in support of the issue?

Mr. Johnson.—My lord, the reason which the witness assigned for not disclosing the marks was, that they were so enable him to make his challenges; that could only apply to the names which were in the panel.

Mr. Justice *Daly*.—He did not know whether they were in the panel or not?

Mr. *Johnson*.—How did he guess whether they were or not?

Lord Chief Justice.—If the witness does not choose to give this evidence, we cannot compel him.

*Edward Croker* sworn.—Examined by Mr. *Johnson*.

You have attended this day, as one of the jurors summoned to try the issue?—I have.

When were you summoned to attend this trial?—On Saturday morning.

Mr. *Hegland*.—Have you the summons in court?—I have not.

What day was it dated?—I cannot say.

[*Note*.—Another gentleman attending in the gallery, produced the summons with which he said he had been served, and it was not dated.]

Here the evidence in support of the challenge was closed.]

Mr. *Attorney General*.—My lords, we will examine the sheriff to explain this matter.

*John Kingston James*, esq. sworn and examined by Mr. *Solicitor General*.

Mr. *Burrows*.—My lords, we object to the sheriff being examined; he is not a competent witness; he comes to exculpate himself from a serious criminal charge, for which, if it be true, a criminal information would lie against him. There is a gentleman of great respectability, whose name has been mentioned, who is a competent witness, and to whom we make no objection.

Mr. *Solicitor General*.—Have your lordships any doubt as to the competency of the sheriff to give evidence upon this occasion?

Lord Chief Justice.—We shall be glad to hear you.

Mr. *Solicitor General*.—My lords, if the sheriff were produced to answer questions going to criminate himself, he might object to answer them; any thing which he can say in vindication of himself, cannot be given in evidence upon the trial for the alleged offence; and that he cannot be examined, because his moral character is at the mercy of his own oath, I am not capable of believing.

Mr. Justice *Osborne*.—It is an objection only to his credit.

Mr. Justice *Daly*.—The issue between the crown and the defendant is, whether the sheriff returned the panel properly, or not: the testimony of the sheriff cannot be given in evidence for himself upon a trial in which he is a party.

Mr. *Johnson*.—My lords, the verdict of the jurors will have great influence upon any jury.

Mr. Justice *Daly*.—The verdict of the triers cannot be given in evidence for the sheriff.

Mr. *Johnson*.—My lord, I do not say it can; but the jury will hear it mentioned.

Lord Chief Justice.—We think the objection is not founded, and therefore Mr. *Solicitor* proceed in your examination.

Mr. *Solicitor General*.—Mr. James, you prepared this panel, as one of the Sheriffs of the city of Dublin?—I did.

When did you send out the summonses?—I think it was on Thursday evening.

Mr. Justice *Daly*.—Did you then send out all the summonses?—Except one, my lord, which was sent out on Saturday.

When had you completed this panel in the form in which it stood when the summonses were issued?—It was on Thursday morning when the sub-sheriff and I arranged it; and it has not been out of my possession except for an hour or two, when it was in the possession of the sub-sheriff. I arranged it from this paper which I have here.

That was on Thursday?—It was.

Upon your oath, in the forming of this panel as it first stood, did you receive any suggestion, or intimation, or assistance, or direction, directly or indirectly, from the crown solicitor or any person employed by him?—Upon my oath, I did not.

Did any person connected with government, direct, insinuate, intimate, solicit or suggest a single name to be inserted in, or omitted out of, this panel, as you first formed it?—Certainly not.

I see that there are two or three alterations or erasures; were they made before you sent out the summonses?—After.

I perceive three erasures?—There are either three or four, which I can readily account for.

Lord Chief Justice.—Do you mean upon the parchment panel, which you handed into the Court?—Yes, my lord.

Mr. *Solicitor General*.—The first alteration is an erasure of a name at the top of the panel?—Yes, sir Thomas Gleadowe Newcomen.

Be so good as to say, why you struck out his name?—Yesterday upon my return from church I was visited by Mr. Montgomery, who made a particular request of me, that I would take out the name of sir Thomas Gleadowe Newcomen, as he was under an urgent necessity of attending a meeting of the royal canal company: I refused him at first, but I struck the name out of the panel this morning.

Was it in consequence of that request that you struck the name out?—It was.

Did any person on behalf of the government suggest that to you?—Certainly not.

What was the second erasure?—The name of Daniel Kinahan.

That name is not new on the panel?—He is not; he is on the present grand jury, and therefore I struck his name off this panel.



When did you do that?—On the first day of the term, after the grand jury was sworn; I found that he was sworn upon the grand jury, and I struck his name off.

Did any person apply to you for the purpose, or suggest to you to do so?—Certainly not, but I considered that his being one of the grand jury incapacitated him from being on the petit jury.

What was the next alteration?—I put the name of Mr. Maquay in the place of Mr. Kinahan.

Did you do that at the suggestion of any person?—I did not.

What was the next alteration, or when did you strike out the name, James Nugent?—I think it was this morning.

Why did you do so?—In consequence of a note which I received from his brother, the late sub-sheriff, soliciting as a personal favour, that I would leave him out.

Was it in compliance with that request, or in consequence of any application on the part of the crown solicitor, or any other than what you have mentioned?—It certainly was not, but in consequence of the note from his brother.

What is the next alteration?—Erasing the name of Robert Law.

When did you strike out his name?—This morning.

What was your reason for it?—In consequence of a similar request from my brother sheriff, Mr. Harty: I first declined, but I afterwards consented.

Was there any solicitation by Mr. Kemmis, or any person on his behalf, or by any other person, except sheriff Harty to omit Mr. Law's name?—Certainly not.

Is there any other alteration?—I believe, the name Benjamin Darley is erased.

Why did you strike that out?—In consequence of a note, which I received, inclosing the certificate of a physician, stating that it would be imprudent for him to attend on account of his taking medicine.

Was there any other motive for striking out his name?—There was not; and I struck it out this morning.

Did Messrs. Kemmis, or either of them, or any other person, save as you have mentioned, suggest to you to omit his name?—Certainly not.

Was there any other alteration?—There was: Mr. Beaumont was returned in the panel, and I struck his name out.

Why did you strike off his name?—In consequence of a request, which I received from himself, and the sub-sheriff requesting it as a favour to leave him out.

When did you erase his name?—On Saturday.

Was there any name inserted in his place?—There was; I put the name of Joseph Smith: the summons for whom I filled myself, and sent out on Friday night.

Did Mr. Kemmis, or his son, or any other

person for him, or on behalf of government, suggest to you the erasure of Mr. Beaumont's name, or the insertion of Mr. Smith's?—Certainly not.

Then these alterations were made for the reasons which you have mentioned, and none other?—Certainly, nor would I at the suggestion of any man be influenced in the discharge of my public duty.

Had you any communication with any person connected with government, as to the arrangement of the panel, or the order in which the names were placed?—By virtue of my oath, there was no application made to me by sir Charles Saxton, or Mr. Kemmis, or his son; nor did I give a copy of the panel to any one, however it may have been obtained.

You have already spoken as to the names; I ask you now, did you, at any time, make any alteration in the order in which the names stand, at the request of Mr. Kemmis, or his son, or any other person concerned for the crown?—Certainly not.

Did you, directly or indirectly, give a copy, or authorize any person to give a copy to sir Charles Saxton, or to any other person connected with government?—I did not.

Are you able to form any belief as to the manner in which a copy of this panel, or any part of it—

Mr. *Burrows*.—My lords, I object to this witness answering any question upon his belief, during his direct examination.

Mr. *Solicitor General*.—I submit to the objection, and will not rely upon the question. You were applied to by Mr. Kemmis to give him a copy of the panel?—I was.

Did you give him a copy or did you refuse it?—I refused to give him a copy, stating that I was the officer between the crown and the people, and would not give it.

Did Mr. William Kemmis ask you for the copy, in a secret clandestine manner or openly?—He claimed it as a right, which I refused; but I told him, that if the agents on both sides agreed, and that it would expedite business, I would give a copy to each.

What did Mr. William Kemmis say to that?—He said the agent might get a copy if he applied for it.

Did Mr. Kemmis, or any other person, on his behalf, or of the government apply to you, or send any person to you, to suggest, that you should insert the name of any person on the panel, or that you should omit the name of any person out of it, or to change the order in which they stood?—Certainly not.

John Kingston James, esq. cross-examined by Mr. Gould.

Let me look at that list which you hold in your hand?—Here it is.

Is this the only list which you ever made?—I might have made another list.

I am speaking to an accurate man; did you make any other list?—Since I received the

venire, I have been very anxious to make out a panel to be returned to it.

No doubt, sir; do you believe that you did make another copy?—I believe I did.

Where is it?—I do not know.

Was the other list made out subsequent to this, or before it?—There was no list made subsequent to this.

Then it must be subsequent to this?—Certainly.

And you cannot form any belief where it is?—I cannot.

You heard the evidence, which has been given this day?—I did.

You perceived the miraculous coincidence?—Certainly, it is very extraordinary.

If extraordinary, how came it to pass?—It is so extraordinary, that I cannot account for it.

You are a very respectable man, and will give a fair answer;—was this coincidence accidental, or by design?—I cannot account for it upon any rational principle.

Do you think it miraculous?—I do not believe in miracles.

You thought it like a miracle?—It is very extraordinary.

Was it the effect of design, or of chance?—It is more like design, than chance.

Do you believe it was by design?—I do.

Where is your under sheriff?—I saw him in Court this day.

Is he here?—I believe so.

Where did you keep this particular list, which you made yourself?—In my house, in my private secretary.

Was it ever out of your possession?—It was for an hour or so.

Have you a clerk in the house?—I have.

Mr. *Solicitor General*.—When was that list out of your possession, for the time to which you allude?—Upon the first day of the term, when I gave it to the sub-sheriff, lest it should be called for.

Mr. *Goold*.—Will you venture to say, that the list which you now produce contains the same names as are in the list which you made before, or different names?—I cannot say exactly.

Do you not believe that it was a different list?—I dare say it might be.

In whose hand-writing is this list?—It is my own.

New. do you not believe that there is so great a difference between them that many respectable names are omitted from one which are in the other?—The only difference consists in the names of Maquay and Smith.

Do you know all the names which are in the former list?—I do not.

Can you repeat them?—No; but I suppose they are all in this list.

How long before you made the last list had you made the former?—I dare say five days, or a week before.

The venire was not delivered to you until Friday week; did you make out the list before

you received the venire?—No; it was afterwards.

Who was the Mr. Montgomery who spoke to you about sir Thomas G. Newcomen? was he the gentleman who moved certain resolutions at the last quarter assembly?—He was.

Do you mean the resolutions relating to some book about Catholic affairs?—Yes.

When did you summon the persons whose names were recently put upon the panel?—The next person was Mr. Smith.

When was he summoned?—On Saturday.

You erased names this morning?—Yes; but I did not insert others in their place.

Look at this list [showing the witness the list which had been given to Mr. William Kemmis]—in whose hand writing is that?—I cannot tell.

Do you not believe, that in this panel there are several sworn Orange-men?—I cannot answer that.

Can you form no belief?—I cannot.

Are you an Englishman?—No, I am not, I am an Irishman.

You speak with such an accent, I took you for an Englishman: in whose hand-writing is the panel?—It is in my own hand-writing. I engrossed it myself; I was so particular in the formation of this jury, that I had the sub-sheriff to breakfast with me, in order that it might not go in the ordinary way through the office, and we chequed off the summonses.

Then you made it out with the assistance of the sub-sheriff?—I did; but had no communication with government, Messrs. Kemmis, or any person on their behalf.

Mr. *Burrows*.—My lords, we call upon the counsel for the crown to produce and examine sir Charles Saxton, and the sub-sheriff.

Mr. *Attorney General*.—My lords, we do not think it necessary to call any other witness: the persons alluded to are in Court, and may be examined by the counsel for the traverser.

Mr. *Burrows*.—My lords, and gentlemen triers—

Mr. Justice *Day*.—Are you going to speak to evidence?

Mr. *Burrows*.—Yes, my lord, and I am the less disinclined, now to consume time, because I am sure, the attorney-general will not conceive it right to go into the trial at this hour of the day, if the challenge should be decided against us. But even, if it were not so late, or if it were more so, I should not discharge my duty if I did not make some observations upon the evidence. Whether the jury has been fairly impanelled to try the issue between the parties is as important an inquiry, as what verdict they should find; because, if they be not an impartial jury, it is idle, and hopeless to examine what the merits are, which would be then altogether out of the case.

Gentlemen, you are sworn to try, whether this array of the jury was made at the demand

nation of the solicitor for the crown;—in short, the challenge is to this effect, that the crown solicitor did procure, through management with the sheriff, a jury to be returned, which would not stand indifferent between the crown and the subject. This is the language of the challenge:—but I do humbly rely upon it, that the affirmative of that issue will be well maintained, even although it should not be established, that the entire of the panel was arrayed at the selection and by the management of the crown solicitor. If any practice, interference, or influence, ever so slight, appear to have been used, in making that array, it is not competent for a jury so tampered with, to try this cause: I go farther, and I say, if that interference was by any underling—by any instrument—by any one acting in the name of the crown solicitor, or his partner, even though he did not know it—it would be an improper jury, even though the solicitor were entirely free from moral taint. If a clerk in the office interfere in this matter, the employer must be answerable; not to the extent of being punished, but of having this array quashed. The question for the triers to decide is, whether any thing has been done, with respect to the arrangement of this panel, by any person in the employment of the sheriff, or the crown solicitor, although without their knowledge, yet being persons in their employment, such as sub-sheriff, or other person: a jury so returned, cannot stand indifferent between the crown and the party; and this challenge ought to be allowed.

Gentlemen, I conceive then, that the sole question for you, as triers, is, whether *de facto*, the panel was tampered with through the agency of any person connected with the crown, or their solicitors, or the sheriff, or any person connected with the sheriff, who had the power to summon them. That is the substance of the issue; and it is no defence to say, that though the triers should believe that either of the Messrs. Kemmis actually did not commission any person to interfere with the sheriffs—still if he were interposed with, or if the sub-sheriff were interposed with, or if any trick were put upon the sheriff, or any management practised, incapable of being got at, the indifferency of the jury is tainted, and they stand an unfair jury. In that state of the facts, the triers are bound to find a verdict, accordingly; the consequence of which will be, the quashing of this array. I am stating those preliminary remarks, to avoid the painful duty which devolves upon counsel, of struggling against testimony procured from men whom I respect as much as any men in the community; and whose testimony might be received as satisfactory, were it not, that persons act under the authority of their names, so as to affect the purity of trial, and to which conduct those gentlemen never would consent.

If I am warranted in what I have been stating, I will proceed to show that it is impossible for rational men to doubt that this

panel has been tampered with by some persons acting from and through the office, in conjunction with some person in the sheriff's office, framing the panel intended to be returned, and altering it according to the wishes and dispositions of those who were desirous of a compliant jury. First, what appears? That the sheriff, whose duty it was, as the crown solicitor stated, to return the panel on Thursday last, in order to give the traverser as well as the crown solicitor, an opportunity of investigating the grounds of challenge to individuals upon the panel, did not make such return; it now appears, that some jurors have been returned, who were not authorized by the venire; for the authority given to him was, to summon the jury to appear upon the first day of the term, and several of the summonses were not issued until after the return had expired.

*Lord Chief Justice.*—Mr. Burrows, there is a mistake with regard to that. I have examined the writ, and I find it returnable on Monday, in fifteen days of St. Hilary, which is this day.

*Mr. Burrows.*—Then, my lord, we were under a misconception, and I will not farther allude to it. But is not this an ingredient in the case not to be passed over, that the solicitor for the crown importuned the sheriff, day after day, before he should make his return, to give a copy of the panel, and that the sheriff, though not bound by law to do it, offered to disclose the names of the jury, provided, that there was a consent with the agent for the traverser, that both parties should have a copy of the panel, and this offer was not communicated to the agent for the traverser? From which, the undeniable inference is, that the solicitor for the crown wanted to have an exclusive knowledge of the individuals composing the jury.

*Lord Chief Justice.*—That is not conformable to the evidence; for the application made to the sheriff was for a copy of the panel, which the sheriff refused, unless both parties were to have it; and Mr. W. Kemmis told him, he had no objection that the other side should also have a copy of it.

*Mr. Burrows.*—My lord, does not his conduct amount to clear evidence that he wished exclusively to have a copy of the panel? And that he would not take it, if there were to be a participation with the other side? For all the sedulity and anxiety of the solicitor for the crown were at an end, the moment he understood that the other side were to have a copy also.

Gentlemen, you are not to take the answer of the witness against his acts. I rely upon his acts, as I would upon the confession of the individual, as to the object which he had in view; he applied, it is true, to the sheriff for a copy of the panel; but when he is told that he cannot have it unless the advantage be participated, he drops all farther attempts to pro-

cure it, he does not communicate to the agent of the other side, the readiness of the sheriff to give a copy to both parties. But, gentlemen, what I have stated is a feather in the scale, it is but dust in the balance, compared with what remains behind; and when investigations of this kind are set on foot, you must be satisfied with circumstantial evidence, because there is so much address, so much extraordinary ingenuity and artifice practised in matters of this nature, that it is never left in the power of any man wishing for a fair investigation, to arrive at a detection of the guilt, from positive evidence. No instance has ever occurred, in which the sheriff or the agent has, in open court, acknowledged a tampering with the jury: but it is from circumstances, accidentally discovered, bearing upon the point of inquiry, reinforced by negative evidence resulting from the suppression of evidence and of explanations in the power of the party to supply.

In support of these remarks, what does appear most unquestionably and beyond all doubt? That the crown solicitor was in possession of nine-tenths of the panel at least, as it has been arrayed, before it was legitimately divulged to any person, or before it was possible for the agent for the traverser to have a knowledge of a single individual upon it. I will go farther, presently, and show you that the panel was actually tampered with. What has appeared? It has appeared that this gentleman, who has denied any direct management with this jury, did, on Friday last, receive in the secretary's office, from a minister of the crown in this kingdom, from his own hand, being sent for for the purpose of receiving it, a list, containing one hundred and fifteen names of persons, who are all named in the panel, but which list, or the panel of which it is a copy, was not divulged until this morning. There is a coincidence of one hundred and two names. Is that a fact? I hear it said. But I suppose there was a complete coincidence. I say, if there was, it would create the strongest evidence to go to the triers, to show, that the crown solicitor, through the medium of a minister in the Castle, received the panel, which the sheriff states he refused to disclose, and which, therefore, if you believe his testimony, could not have been obtained, unless by some contrivance, or practice, which even the sheriff himself cannot develop. Is the coincidence the effect of chance, or is it a miracle? Will it be possible for you, gentlemen triers, to hesitate for a moment in finding a verdict to quash this array, and give your Catholic brethren the benefit of the laws of the country—a fair trial by a fair Protestant jury? That is all we require.

What is the difference between the panel and the list? The latter comprehends one hundred and twelve names, instead of the whole number upon the former. The difference is so slight that it cannot affect the weight of the evidence, much less is it a ground for rejecting it altogether. If there had been a complete

identity, it is admitted, that, if not the effect of design, it cannot be of a miracle; and if there be not an exact identity, as there are degrees in miracles, it is not quite so miraculous: but, as far as there is a coincidence, it must leave you without any doubt that there has been some corrupt tampering—some undue preference has been obtained, through the influence of some person—the character of the government must be tarnished in this transaction, which cannot be defended by the able and zealous advocacy of my learned friends here, nor by any thing which they can assert here; and nothing can clear away the imputation but a consent to let the panel go, and give an opportunity for the return of another which may be above all rational suspicion.

Gentlemen, either of the two inferences result most unquestionably from the evidence. It is utterly impossible to compliment any man, by surrendering our understanding to his belief of what is incredible. Either Mr. Kemmis's list actuated the return of the panel, or the panel actuated it. The sheriff admitted that the list which has been made out either governed the panel, or was taken from it; otherwise, it is impossible to account for their being so nearly identical as they are. This matter is not denied, and, taking it either way, it is a scandalous violation of that equality which ought to prevail in the return of a jury.

But it is probable that the worst alternative is true. What has Mr. William Kemmis told you? He got, at the Castle, a list of the jury who were to try this cause, before they were summoned. I say I am warranted to assume, that it was given before an individual was summoned. We are not able to know when they were summoned, but proof has been given of one being summoned only on Saturday last, from which I have a right to infer that the panel was not summoned until Saturday.

Mr. Justice *Daly*.—The sheriff said, that he issued his summonses on Thursday, except one.

Mr. *Burrows*.—My lord, I am perfectly in possession of that, and will not state the facts different from the truth. The sheriff said he issued his summons on Thursday evening; but no proof has been made when any individual was served. We have proved a service upon one last Saturday, and that upon a man not inserted on Saturday. Therefore, the counsel on the other side have not satisfied you in this respect, and the utmost which you can presume is, that the summonses, in general, were served on Friday.

Mr. Justice *Day*.—The panel was formed on Thursday.

Mr. *Burrows*.—My lord, I shall remark upon that, in another part of the case. The triers, holding themselves indifferently between the crown and the subject, as I am satisfied they will, must presume, that sir Charles Saxton had that list of the jury in his pocket, before any of them was summoned. But why?

Because it was late on Thursday when he gave it. We have proved a summons served on Saturday, and they have not proved a service even on Friday, and sir Charles Saxton, the minister of the country, upon whom the imputation was cast, has retired, scorning to exculpate himself, by swearing that he did not interfere improperly upon the subject; leaving it uncertain where he got the list, from whom he got it, or for what purpose, or why he gave it to Mr. Kemmis. But the transaction speaks itself, and the effect cannot be overwhelmed by any talents or eloquence which may follow me. It is not possible to rescue the jury from the imputation which falls upon them, and if they shall ultimately try the cause, I do not envy the prosecutors any verdict which may be pronounced.

Therefore, gentlemen, you see that sir Charles Saxton might have had the list before the jurors were summoned, or even before they were arrayed. He gave it to Mr. William Kemmis, whom he sent for. The witness said he could not state the precise business which he was sent for; but, can you hesitate to believe that he was sent for, on account of this very particular business, when nothing else is proved to have been done? He goes to the Castle on Thursday, being sent for, and he receives a list of the jury who are to be returned to try this important cause. Do you not believe that sir Charles Saxton had it some time before he sent for Mr. William Kemmis? Is not the inference palpable? Some distance of time must have intervened between his obtaining the list, and sending for the solicitor. We have been told that we might examine sir Charles Saxton; but does it rest upon us, who allege a tampering with the panel, to resort to such evidence, and leave every thing that might give colour to the transaction, to the cross-examination of the witness? No; every juror will say that the party whose conduct is impeached, should rescue himself from the imputation; and here they have suffered sir Charles Saxton to leave the court, without producing him to be examined. We sent for him, I admit. Why? Because, we thought that if we had not, he might, at the time of the inquiry, be conveniently absent: but here he came, was present during great part of the inquiry, and departed without explaining any part of this transaction.

Upon this awful subject you stand in the situation of a jury—discharging similar functions—and I am appealing to you in that character. I consider that you cannot but believe that the secretary was put into possession of the panel by some management or other. Now I will show you that the panel was most probably altered and influenced according to the list which was obtained by the secretary, either before Mr. William Kemmis got it, or after. The sheriff himself wonders at the coincidence of the names: You, gentlemen, have seen various instances in which the order and position of the names have been varied in the

panel from the order in which they stood in the list. There cannot be a doubt that the panel has undergone some alteration, in consequence of that management, some way or other, acting upon it. What did Mr. William Kemmis say respecting the numbers? He altered No. 4 in the list which he got from the secretary, to No. 36. Why? To help him in his challenges. How that could be I cannot conceive, nor would he explain.

But the numbers coincide with the order of the panel, and if you know any thing of the mode of framing a panel, you must be aware that it becomes a matter of consequence to the parties to know—not only the individuals returned upon the panel, but the order in which they stand: for, if men are set aside with a view of arriving at better, that selection of a jury can be facilitated by such an identification as appears in the present instance; for, although there be an alteration in the change of position, yet the numbers correspond.

It may be stated that the crown has an indefinite right of setting aside, and therefore a precise order would be no object to them. But do not be deceived by that argument; they have the right, and they exercised it in such a manner upon a former occasion as to draw down upon them obloquy and censure; they set aside twenty-three of the most respectable inhabitants of the city, in order to arrive at what they considered a favourable jury—who disappointed them. They did not like to exercise their discretion in the same manner; it is a discretion founded in usurpation, and, whether acknowledged by law or not, it has become practice, but should be used with the utmost caution and fairness.

*Lord Chief Justice.*—The usage is as ancient as any in our law.

*Mr. Burrows.*—My lords, I am now only arguing upon the motives of exercising it, with a view of showing that the crown did not wish to practice it, as they had done before; although it gives the crown the unequal advantage of selecting twelve out of a panel containing one thousand, they would not exercise it in the bare-faced manner in which they did upon a former occasion, and upon that account it became necessary to interfere with and alter the panel.

There is, then, that other feature in this case, that either the panel which has been returned this day, suggested the list, or the list suggested the panel: the latter is infinitely the most probable; and the coincidence cannot otherwise be rationally accounted for. It appears that a panel, different from the present, but to what extent the sheriff cannot say, was arrayed a week before the present one, in the presence of the sub-sheriff, and equally with his joint assistance.

*Mr. Justice Day.*—Varying only in two names.

*Mr. Burrows.*—My lord, he could only

ascertain two names. But he could not say whether it was not materially different. The sheriff was asked whether he could say that this panel coincided with his first list? He said he could not. Whether it differed to the extent of twenty names? He said he could not.

Then, gentlemen, what appears? The panel was arrayed by the castle-sheriff and his sub-sheriff: the latter is not produced, to give any account of the matter; but it appears that a list of this panel, varying in a very few instances, came from the Castle—from the minister of the country. Is there not more than suspicion—is it not convincing proof that the original panel, formed a week before, was sent to the Castle for animadversion—to be varied according to suggestion? The crown solicitor is not let into the secret; the sub-sheriff is not produced; but a paper is produced which came from the Castle, and it is made to agree, in point of arrangement, with the panel which is acted upon. Gentlemen, it is quite impossible for you to find a verdict, saying that you are satisfied this is a pure jury; that it has not been procured by tampering, through the agency of the crown solicitor, or by some instrument, anxious, *per fas & nefas*, to obtain a verdict which may obliterate the effect of that quieting and satisfactory verdict which has been already pronounced.

Gentlemen, although you are not to decide upon the guilt or innocence of the Roman Catholics, it is a question of much importance to them, whether they shall have a fair and impartial jury, or be tried by a jury procured by such tampering as has appeared. I say, that there is as much evidence before you as can be reasonably expected in any case where palpable tampering has taken place. A case occurred lately in the Exchequer, where a juror after he was returned in the panel, was requested to go upon the lands which were the subject of litigation, to make himself acquainted with the value of it, and the Court set aside the verdict without costs, because they would not tolerate a finding, where there had been any interposition, management, or practice of any kind by one of the parties with a juror.—It is true, sir Charles Saxton is not a party in this case; his name does not appear upon the record, but gentlemen, you know who he is;—that he is a minister of this country deeply interested in this cause, acting for the crown in the most important affairs of the state. What business had he in sending for the crown solicitor?—Or in getting a copy of the panel before the jurors were summoned?—Do you believe, that he obtained it from a friend of justice, with a view to a fair trial of the Traverser? It is manifest he could not: he procured it clandestinely; and although it is alleged that he did so to enable the crown solicitor to make his challenges, yet there is ample ground to presume, that it was for a very different purpose. The panel was in the possession of the sub-sheriff, and although he was here, he was not examined. Therefore,

this case does not rest upon suspicion; there is more—there is violent presumptive evidence upon which you gentlemen are bound to act; that this jury, in the language of the challenge, has been impanelled under the nomination of the solicitor for the crown, acting as the agent of sir Charles Saxton. Whether he was the confidential instrument, or was only partially intrusted, the objection substantially applies; and you will exercise a sound judgment upon this solemn and awful occasion, as honest men, independently between the crown and the subject:—your verdict will be the fair result of your investigation, and I have no doubt the conviction of your minds will be, that this panel has been tampered with.

*Mr. Attorney General.*—My lords, it is my privilege to say a word or two, if there be any doubt upon the minds of the Court, or the Triers.

*Lord Chief Justice.*—With respect to the necessity of observing in reply, you must judge for yourself.

*Mr. Attorney General.*—My lord, I am satisfied so to consider it;—and really it is the uncommon degree of warmth and zeal of my learned friend, who is so decided an enthusiast in this cause, and every thing connected with it, which give a seriousness to the present inquiry, of which it otherwise would not be deserving, one allegation made in support of the challenge, I should suppose by an accidental lapse of the tongue, is, that the return was made by the Castle sheriff.

*Mr. Burrows.*—I only intended to mean the sheriff, whose panel got into the Castle.

*Mr. Attorney General.*—The question is, whether the panel which has been returned this day, was made out at the nomination or instance of any person concerned on behalf of the crown? And, therefore, if it was made by any solicitor for the crown, or by any other person acting for them, or on behalf of the government, I readily concede, that such nomination would be improper, and that the array ought to be quashed. But in order to come to this conclusion, you must convict Mr. Kemmis and his son, and Mr. Sheriff James, who have been examined upon their oath, of absolute and palpable perjury.—For Messrs. Kemmis have sworn positively and directly, and incontrovertibly, that they did not directly or indirectly apply to the sheriff, or solicit, or interfere with him respecting the appointment of the jury.

Gentlemen, the sheriff also has been examined, and if you give credit to him, he positively states, that he formed the panel, and that he did not directly or indirectly do so at the nomination or instance of any person, much less of any person acting under the authority of the Castle or the solicitor concerned for the crown. Therefore you have positive and direct evidence of persons of

respectability, upon the very point upon which issue has been joined, utterly negating the assertion which has been made on behalf of the traverser; and the attempt to mislead you upon the subject arises from an effort to excite suspicion in the case; because, on Friday a copy of the panel, supposing it to be such, got into the possession of the solicitor for the crown.

There is a great mistake in this matter, which has misled the enthusiasm of my learned friend to an extravagance, in supposing that there is any mystery in the return of the jury, as made by the sheriff.

If the sheriff, upon the very day when he was applied to by Mr. William Kemmis for a copy of the panel, had given a full copy of it, that would not in the slightest degree invalidate the return, nor be any ground to support the challenge which is now taken to the array. The sheriff does not take any oath not to disclose the panel. In other cases, the panel is disclosed to both parties at a reasonable time before the trial, in order that they may know the qualifications of the jurors, and be prepared with their challenges. Accordingly, Mr. Kemmis founding himself upon that practice, openly applied to the sheriff, for a copy of the panel as a matter of right; there was no secret or mystery in the application; it was not made until it was supposed the panel had been returned:—the sheriff refused to give a copy of the panel, from a peculiar delicacy, not conceiving himself bound to grant it, and, therefore, exercising a caution respecting these trials, and apprehending that an ill use might be made of what he should do at the instance of one of the parties. The claim, as I said, was made openly, not as a matter of favour, but of right; it was made not clandestinely or secretly; and it was refused by the sheriff who had previously made out his panel, definitively, and conclusively, excepting the few instances which he has explained.

You recollect that the sheriff issued his summons on Thursday for the whole panel, and therefore, we must conclude, that it had been fixed and ascertained, upon, or prior, to that day. It is not pretended, that there was any copy in the possession of the solicitor for the crown, or sir Charles Saxton, until Friday. But it is alleged on the other side that it is probable, that sir Charles Saxton had a copy long before. Gentlemen, I submit to you, that the probability has been the other way; for the first thing he would do after he received it, would be exactly what he did, that is, put it into the hands of the crown solicitor. We are not now investigating how or in what way this copy was obtained; it was obtained on Friday; but not until after the panel was completed, and the summonses had been issued; and as to the alterations which are charged by my learned friend to have been made at the instance of the crown solicitor or the government, surely they are rebutted by the evidence which you have heard; the sheriff

has explained those alterations to you, and the manner in which they were made by him in consequence of applications of particular individuals, and not at the instance of the crown solicitor, or any person concerned for the government.

But it has been endeavoured to throw out an insinuation before the public, that there was some corrupt practice by which a copy of the panel was obtained. That is a matter foreign to the issue which you have to try. The duty of an active agent is, to get a copy of the panel of the jury by which the cause is to be tried. It is no imputation that the agent applied to the sheriff, or that the sheriff refused to comply. The activity of an agent, in the discharge of a duty which he is bound to fulfil—to inform himself concerning which juror he should challenge, and which he should not—can never be construed into an act of turpitude, from which it is to be inferred, not only, that he did an improper act, by prevailing upon the sheriff to form a wrong panel, but also, that the sheriff was a party in the collusion, and made a wrong panel at the nomination of the agent.

Gentlemen, if there were any thing wrong in the mode of obtaining a copy of the panel, that would be the subject of another inquiry. If the sheriff gave a copy of it, or if his bailiffs to whom the summonses were delivered gave a copy, it is not now to be inquired, whether they were right or wrong; but giving it after the panel was formed, is no evidence in support of the challenge; even if it should be thought improper on the part of the bailiffs employed to summon the jury, to discover who the jurors were. I must observe, that the bailiffs are under no obligation of secrecy—but even if they were wrong, it amounts to no proof of the issue before you, that the sheriff made out the panel at the nomination, or according to the wish or inclination of the crown solicitor, or of any person concerned on behalf of the prosecution, and that is the only question upon which you have to decide.

The question is, what was done before the panel was formed? It appears conclusively, unless you believe the sheriff to be perjured, that the panel was completed on Thursday, and that all the summonses, save in the instance of one single juror, were issued that day; the striking out of some names afterwards, has been satisfactorily explained by the sheriff; but the obtaining a copy of the panel, after it was definitively formed, and that copy not obtained from the sheriff (for it was positively denied by him) is no evidence, direct or presumptive, that the panel itself was formed at the instance, or nomination of any person concerned in the prosecution; and the want of a complete coincidence between the copy obtained, and the panel actually returned, is conclusive to show, that it was not furnished by the sheriff, for if the sheriff were influenced to make the panel, why would he hesitate to give a complete copy? Or why should he be

applied to for a copy, by those who previously knew the names of the persons to be returned, if the charge be well founded, that the panel was arrayed at our nomination? And therefore, there is nothing but suspicion, not only unsupported by, but directly contrary to the testimony of three unimpeachable witnesses, and the facts, and circumstances of the case. So that you will have no hesitation, under the direction of the court, in deciding, that this panel was not arrayed at the instance, or by the procurement of the solicitor for the crown.

*Lord Chief Justice.*—Gentlemen, it appears to us extremely important, that you, who are to try the challenge, should understand what is alleged by it [Here his lordship read the challenge.]

Gentlemen, if the facts so asserted were established to your satisfaction, you could have no doubt that this would be an unfit jury to try the cause. But, in deciding upon that question, as in all others, those who are to pronounce their judgment upon evidence, must see whether that evidence bears out the facts which have been alleged. There have been three witnesses, and only three witnesses, examined; every one of whom, so far as relates to himself—Mr. Thomas Kemmis, and his son—utterly deny all interference, directly or indirectly with the formation of the panel; and the sheriff equally denies all interference on their part, or by any other person concerned, or supposed to be concerned in the prosecution. And therefore, it must require very strong circumstances, indeed, to prevail upon you to believe, that the facts are in opposition to such testimony. The sheriff has denied all interference with respect to the formation and return of the panel, solemnly, fully, and powerfully, as man can do. There is a fact in the case, which it would, perhaps, be better, did not exist. It appears, that a copy of the panel got into the possession of the crown solicitor, and that no copy got into the possession of the opposite party. The list, which has been produced, has a sufficient coincidence with the panel, so as to leave no doubt that it was procured as a copy; and the very difference in some of the names, and the order in which they stand, are relied upon as circumstances to show that this panel has been corruptly made, as well as improperly communicated.

Gentlemen, it appears, that an application was made by Mr. William Kemmis, early in the last week, to the sheriff, to return the panel; and a copy of it was demanded, not as a matter of favour, or as a clandestine application, but under a conviction, as he states upon his oath, that he had a right to demand what he asked. If the sheriff had complied, that circumstance would be no evidence to show that an improper interference had been used in forming the panel. But the sheriff refused it, saying at the same time, that if both parties consented, he had no objection that both should have a copy. It appears, however,

that one of the parties obtained a copy. The sheriff positively swears, that it was not by his consent; nor does he know how it got into the possession of the party. Therefore if the case rested upon the communication of this copy, however it may be wrong—and there is no possibility of proving of it—you will judge whether it carries conviction to your minds, that the panel itself has been corruptly, and by improper interference, formed in the state in which it was when made out by the sheriff.

On Friday the copy came to Mr. Kemmis from the Castle. The sheriff had formed it upon Thursday. The summonses were sent out on that evening to all the jurors, except one. The panel was then formed, and completed on Thursday, and not before. A copy was delivered to Mr. Kemmis on Friday; it may be presumed very shortly after it had been obtained. At that time the panel was completely formed. Some alterations were afterwards made, by erasing names, and putting others in their place. The sheriff has declared upon his oath, the mode, the motive, and the manner in which those alterations were made: in every one, he utterly denies all interference on the part of the prosecution; and he has accounted for them, upon private distinct grounds, applicable to each individual, respecting the change of name; and as to supposing that the change of names under such circumstances can be imputed to the interference of the crown officer, it would be going entirely against the evidence of three persons, without any evidence being laid before you, from which such an inference could be drawn.

Gentlemen, the questions are very different, whether a knowledge of the panel has been improperly procured? Or whether the sheriff has been tampered with in the formation of it? There is no such direct connexion between the facts, as to suppose that the one might not take place without the other. A solicitor is not unwarranted in endeavouring, by fair means, to procure possession of a copy of the panel, and when he has obtained it, he is not unwarranted in using it, in preparing his challenges. What difference does it make in the case? The party obtaining a copy has the superior advantage of a longer time for considering the persons whom he would challenge, and whom he would not; but that is a very different question indeed, from what is submitted to you by the challenge; whether the sheriff had the names of the jurors dictated to him, and whether he inserted them in his panel from the dictation of another.

If this panel was completed on Thursday, with the exception of the alterations which have been accounted for; the first period in which you find any evidence of a copy getting into the possession of the solicitor for the crown, was the following day; you would suppose that they would use it as speedily as they could; you will judge, whether under these circumstances, the panel, which the sheriff swears was formed in the manner he told you,



and which remained in the same state, save as to the alterations which he accounted for, and which no party in the cause is responsible for—was corruptly formed? That circumstance of the possession of a copy of the panel is the only one upon which the counsel for the traverser can rely, to support the accusation of an interference with the sheriff, contrary to the direct and positive testimony of the sheriff, and the Messrs. Kemmis. Gentlemen, if you believe that they, or either of them, or any person for them, in any manner dictated, altered, or in any respect procured a change in the panel, you will find for the challenge. But if you are satisfied that the panel was fairly arrayed by the sheriff, and not at the dictation of any person for the crown, you will find against the challenge; and hold the jury returned, to be a fit jury to try the cause. You are, in fact, trying the competency of the jury; and you are to determine, whether they are free from the imputations which have been thrown out, affecting the sheriff and the crown solicitor. If you think that the panel was formed corruptly, or improperly, you will find for the challenge; but if you should be of opinion, that the panel was fairly and honestly arrayed by the sheriff, you will find against it.

[The Triers retired for about five minutes, and upon their return, stated their finding to be, against the challenge.]

*Mr. Attorney General.*—My lords, we now propose, that the jury should be sworn, and further proceedings adjourned until to-morrow.

*Lord Chief Justice.*—We think it rather late; it is near six o'clock, and we had better sit early to-morrow, and then proceed on the trial.

— — —

Tuesday, 28th January, 1812.

[The panel of the jury was again called over.]

Hon. Price Blackwood, as appearing first upon the panel, was called to be sworn.

*Mr. Burrows.*—My lords, upon the part of the traverser, it has been communicated to me, that several challenges are intended to be made to individual gentlemen who have been returned upon this panel. My lords, what I am now going to mention in open court, is rather addressed to the discretion of the attorney-general, than to the legal discretion of the Court; but still it is matter fit to be mentioned in court, in order to save the public time; and I solemnly declare that in making the proposition, I do not mean to make a reflection upon any individual. My learned colleagues agree with me, that it is right and expedient to expedite the public business, and for that purpose we will waive every challenge to any person called upon the jury, provided the counsel for the crown will consent that each gentleman, as he is called, shall declare upon his honour, whe-

ther he is an Orange-man, or not; we will consent, that every gentleman, who will assert that he is not an Orange-man, shall be sworn upon the jury. We require no other proof or establishment of the negative, but the individual gentleman solemnly declaring, before he is sworn here, that he is not an Orange-man. I hope it will not be said that this proposition is made for inflammatory purposes; or to supply fuel for the newspapers. But I do not deny what impression it ought to have every where, if it be rejected.

*Lord Chief Justice.*—What is now said, is not addressed to the Court as an objection; and therefore, having nothing to do with it, we may proceed, and have the jury sworn.

*Mr. Attorney General.*—My lords, if there be any legal objection made, or if there be any thing suggested to show, that any individual was unfit, from bias or partiality, to try the issue, I would consent to have him removed; but as to this general allegation I know not what it means: I know not what constitutes the character of an Orange-man, or what are the ingredients of which it is composed; much less do I know any thing which can disqualify the person called, to act as a juror; and therefore, my lords, I cannot join in disparaging the gentleman, of whom I know nothing, or others who are called upon the panel, and who are stated to be unfit to try a criminal case; it would be unbecoming of me to yield to such objection, and I consider it as a snare thrown out to involve me. Let the counsel for the traverser state their objection to each individual gentleman, as he comes to the book, and we will examine it; but these observations departing from the common course of proceedings, are calculated to excite distrust and other ill effects, which it is the common interest of us all to put an end to.

*Mr. Burrows.*—I will consent to waive all challenges, if the attorney-general will consent to ballot for twelve out of the panel.

*Mr. Attorney General.*—Surely this proposition is foreign to the cause. My learned friend is lending himself too much to party, when he makes this proposition. Why should not the proceedings in this case be conformable to all other cases which have taken place since the introduction of the common law into Ireland?

*Mr. Burrows.*—Consents a thousand times over, even in criminal cases; and every case depends upon its own particular circumstances.

My lords, there is an affidavit preparing for the purpose of postponing the trial for a week; it may save time, that I should now state the purpose of it. The traverser swears, that it has appeared, and yesterday your lordships had judicial knowledge, that a paper, purporting to be a copy of the panel, and almost exactly coinciding with it, was given by the under

secretary to the solicitor for the crown, several days before it was returned by the sheriff, although the sheriff refused to give a copy of it, and did not give a copy of it, to the solicitor for the crown, or to any other person.

The traverser swears, that the panel has been interfered with, and in consequence of that, the names of the jurors have been displaced, and that men, hostile to him, have been put forward upon it; and that he will be able to discover evidence to prove such interference.

It was obvious to your lordships, that an advantage was given to the prosecutor, which it was not in the power of the traverser to have. Upon the grounds stated in the affidavit, we humbly apply to the discretion of the Court, and especially from what appeared yesterday, to postpone this trial for a week.

*Lord Chief Justice.*—Read the affidavit.

*Mr. Burrows.*—My lord, it is not yet sworn; the agent is preparing it.

*Mr. Justice Day.*—Your affidavit should have been prepared.

*Mr. Burrows.*—My lords, I confess I think it ought.

*Mr. Justice Osborne.*—We are losing a great deal of valuable time.

The Court waited near half an hour, when an affidavit was sworn by the Traverser, and read as follows:—

*The King against } THE Traverser, Thomas  
Thos. Kirwan. }* Kirwan, maketh oath and saith, that this deponent attended in court yesterday, pursuant to his recognizance, when he heard the panel read and called over, and to his infinite mortification discovered that the far greater proportion of the said panel, and particularly almost all the persons likely to be left on as jurors, are generally considered to be, and are, as the deponent believes, hostile and adverse to the Roman Catholics of Ireland; and many of whom are, as he believes, sworn Orangemen: saith, that the persons most likely to be adverse to the deponent, were the most punctual in their attendance. And that the foreman of the said panel is, as this deponent is informed and believes, an Orangeman, and is brother to a nobleman, who either is, or lately was, as this deponent is informed and believes, a provincial grand master of Orangemen. And he, as this deponent is informed and believes, expressed his regret at not having been a juror at the trial of Dr. Sheridan, in order that he may have found him guilty. Saith, that the panel of jury in this case was interfered with, as this deponent also discovered yesterday, by sir Charles Saxton, the acting secretary to government, and must necessarily have been considerably in-

fluenced by such interference to the prejudice of this deponent, as deponent believes, in whose prosecution the members of the government in Ireland have taken an active and lively interest, as deponent believes: saith, that he believes, that a trial by such a jury as the counsel for the crown have the power of selecting from the panel, as it stands at present, would scarcely be fair or impartial. And saith, that deponent did not see the panel or any copy thereof, until deponent saw the same in court yesterday: saith, that he has been advised, and believes that it would be a valid challenge to each jurymen, to prove that he is an Orangeman, and consequently bears malice to the deponent, being a Roman Catholic, or that he has been otherwise influenced against deponent, by persons acting in the government of the country: saith, that he has used his best exertions to procure evidence of the facts to establish challenges to the jurymen individually, but from the number of the persons liable to be challenged, and from the shortness of the time that has intervened since yesterday, he has been unable to procure such evidence as would enable him to go with safety to trial: saith, that, if the trial be postponed, he hopes and expects to be able to procure sufficient evidence to prove the same in at least very many instances, and saith he was ready for his trial in the last term, and is perfectly ready at present, if he could procure a fair and impartial jury. And that his only object in the present application is to procure a fair trial, and not for any unnecessary and improper delay.

*Mr. Blackwood.*—My lords, as my name has been mentioned in the affidavit which has been just read, I declare, upon my honour, that I never was an Orangeman, and that I have always acted with every regard towards my Roman Catholic fellow-subjects: and I declare, upon my honour, that I never made any declaration respecting the trial of Doctor Sheridan. I do not believe that my brother ever was an Orangeman; and upon his extensive property, where many Roman Catholics reside, he has always treated them with regard, and upon the same terms with his tenants of any other persuasion.

*Mr. Attorney General.*—Upon my honour, I do not know that any Orangeman is returned upon this jury.

*Mr. Burrows.*—Then my proposition is innoxious.

*Mr. Attorney General.*—No, it is very noxious, and it would be very disgraceful to me, as Attorney General, if I submitted to it.

*Mr. Burrows.*—This declaration of Mr. Blackwood only shows, that Mr. Kirwan was mistaken in one instance.

**Mr. Justice Osborne.**—The only question is, whether upon this affidavit we should put off the trial?

**Mr. Justice Day.**—It appears that the traverser is mistaken in a most essential point of his affidavit, which, therefore, is very little to be attended to.

**Mr. Burrows.**—My lords, the denial only goes to a small part of the affidavit. Something very extraordinary did occur. There was a marvellous coincidence between the paper which the solicitor for the crown had, exclusively, in his possession, how is that negatived?

**Lord Chief Justice.**—That is the only matter in the affidavit, which deserves consideration. It goes however, in direct opposition to the verdict of the triers, and the affidavit cannot have the least weight with the Court, against the opinion of those who were sworn solemnly to try the fact; and whose verdict was manifestly supported by the evidence, so far as the challenge went, that there had been no interference with the sheriff, to nominate any person upon the jury, or to strike any person off, or to arrange them in any order whatever, save in the instances in which some few were struck out of it, at the desire and upon the communication of the individuals themselves: It appeared, that a copy did get into the possession of the solicitor for the crown, but without the knowledge of the sheriff, and the only circumstance of weight is, that one side was in possession of a copy before the other. If the other had it also, there would be no cause of complaint. I wish, either that the solicitor for the crown had not such a copy, or that both the solicitors had it. Other parts of the affidavit of the traverser appear to have been mistaken, as far as we can attend to the communications made in open court by a gentleman particularly alluded to; and the counsel for the traverser said, that he would be satisfied with the declaration of the gentlemen upon their honour. But still, if the traverser has sworn positively, that time is necessary for him to inquire into the qualification of the jurors, that is a circumstance, and it is the only one, which can weigh with the Court. The subject of the inquiry is, whether particular persons are, or are not, Orangemen?

**Mr. Burrows.**—I believe the affidavit goes farther; it states that he expects he shall be able to prove, that individuals, returned upon the panel, were influenced by the government of the country; and in this, he is confirmed by the circumstance of a copy of the panel coming from the Castle to the crown solicitor, and which furnishes also a ground to show, that he may be able to make objections, going to contradict the finding.

**Mr. Justice Day.**—That would go to impeach the verdict of the triers?

**Mr. Burrows.**—No, my lord, but to show

that individuals had been tampered with, after the array had been formed. It would be an objection to the *polls*, and not to the *array*, and therefore would not impeach the verdict of the triers: it would be an undoubted objection to a particular juror, if it appeared that the secretary or the solicitor for the crown, had asked his opinion, or in any manner influenced him; and as we did not know the panel until it was called over this morning, we could not be prepared with objections.

**Mr. Justice Day.**—Parties accused are under that difficulty at every assizes.

**Mr. Justice Osborne.**—It occurs to me, that if an application had been made yesterday, to postpone the trial, for the purpose of having an opportunity of investigating legal objections to the polls, I for one, should have yielded to it; but here is an affidavit highly objectionable: tending to controvert the finding of the triers; casting imputations upon persons returned upon the panel, without suggesting any particular ground, or knowledge to support them. It might be dangerous, as a precedent, to postpone a trial upon such an affidavit; however, I am not prepared to say, that the trial may not be postponed, for a day, notwithstanding the intemperance of the affidavit.

**Mr. Burrows.**—My lords, the affidavit states, that the traverser expects to be able to obtain proof to establish other objections.

**Lord Chief Justice.**—The only part that weighs with me is, that a copy of the panel got into the possession of one of the parties, which the other had not, by which the former has had better opportunity than the latter. Many parts of the affidavit, however, are highly indecorous and indecent.

**Mr. Gould.**—My lords, it never was the intention of any member of the bar concerned upon this occasion, to throw any imputation upon the finding of the triers; they are worthy men, and their verdict is entitled to respect. There may be an incorrectness in the wording of the affidavit of the traverser; but what he meant to convey was this; that it having appeared, that the minister had surreptitiously obtained a copy of the panel, which the traverser did not see, he thinks it probable, that there must be an interference with individuals returned upon that panel.

**Lord Chief Justice.**—This general supposition, founded upon the traverser's thoughts of probability, can have no weight at all.

**Mr. Gould.**—Very possibly, but I only mean to say, that no gentleman of the Bar, intended to throw an imputation upon the triers.

**Mr. Solicitor General.**—Your lordships will please to observe, that so much of the affidavit as appears to bear against the verdict of the triers, ought not to have any weight with the Court; and that even if it did convey any cen-

sure against the triers, it was not so intended by the counsel on behalf of the traverser: and therefore, I make no further observation upon that part of the affidavit.

The application made to the Court is grounded upon the residue of the affidavit, which relates to the subject of interference, and that the persons concerned for the crown had an earlier opportunity of being prepared with their challenges, than the traverser had. With respect to that, it is impossible to contradict the verdict which was yesterday pronounced; it appears, that there was no interference, no tampering, nor any other circumstance which could found an imputation: no circumstance whatever, with respect to the formation of the panel.

*Lord Chief Justice.*—That is confirmed satisfactorily to the bench.

*Mr. Justice Day.*—Most certainly so.

*Mr. Solicitor General.*—Then it appears my lords, that some of the persons concerned, got possession of the copy of the names returned upon the panel, and thereby had the advantage of coming better prepared than the other side, who had not the same opportunity: that is the complete subject of the present application. First, my lords, I think it right to observe, that Mr. Kirwan, in his affidavit, swears, that he *himself* did not know any thing of the panel until yesterday, when it was produced in court; but he does not swear—what I apprehend your lordships might think necessary,—that to his belief, no person concerned for him saw the panel, or knew the names which were returned in it. My lords, that I conceive to be a defect in this affidavit, in point of form; but independent of that objection, see what he wears in the concluding part of it; he does not suggest, that he has any reason to believe, that any individual was tampered with by any person concerned on behalf of the prosecution; but he says, that he hopes to be able to prove the greater part of the persons returned, to be Orange-men, and when he suggests the imputation of any influence being exercised, it is not grounded upon positive assertion that he knew the fact; nor even that he heard or believed the fact; or any thing, but general relief, which is nothing more than suspicion, as is suggested to me by the attorney-general, arising from the alleged interference of sir Charles Saxton with the panel.

Will the Court put off the trial upon the mere abstract fact that the counsel on one side were worse prepared in the matter of challenging the jury, than the counsel on the other were? I do not argue the question now, whether the sheriff should keep his panel a secret. But suppose it were justifiable in him to give a copy of his panel to one side, and not to the other, in this case he did not give it to either, but a copy has got into the hands of one of the parties, in what manner does it not appear. Perhaps, I should not get much

credit with some persons, if I said, I could not conjecture how that was done. But suppose, that the sheriff gave a copy of the panel to one side, and not to the other, the subject would be narrowed to this consideration, whether, where one party, by diligence, or contrivance, instructs himself earlier than the other in the grounds of challenging the jury, that would be a ground for postponing the trial. My lords, it is observable, that the attorney concerned on behalf of the traverser has not made any affidavit in this case, denying that he had any knowledge respecting the panel.

*Mr. Joy.*—Let Mr. Kildahl make an affidavit or offer himself to be examined now upon that subject.

*Mr. Justice Day.*—I think the attorney for the traverser ought to offer himself to be examined.

*Mr. Solicitor General.*—My lords, we will wait until an affidavit be prepared, but are equally satisfied, that the gentleman should be examined.

*Mr. Burne.*—My lord, I rely upon the precedent of yesterday, when Mr. Kemmis availed himself of his privilege, that he was not bound to disclose the secrets of his client.

*Lord Chief Justice.*—Then I consider, that all which has passed with respect to a knowledge of the panel before it was returned by the sheriff, remains equal at both sides, and if the attorney for the traverser does not give the satisfaction required, the objections which have been made go for nothing.

*Mr. Joy.*—My lord, it is important for the public to know the truth, and the whole truth.

*Mr. Burne.*—My lords, I will object to the attorney for the traverser making an affidavit, or offering himself to be examined; and I am not informed whether he knows of the matter or not.

*Lord Chief Justice.*—Then we are to take it, that the attorney for the traverser will not offer himself to be examined?

*Mr. Burne.*—My lord, the solicitor for the crown sheltered himself under his privilege; and it is equally the privilege of the attorney for the traverser to protect himself.

*Mr. Attorney General.*—My lords, I consider the affidavit which has been made by the traverser as scandalous; and that it ought to be taken off the file.

*Mr. Justice Osborne.*—I thought that the other side, after what has passed, would have applied for liberty to take it off the file.

[Panel called.]

*Hon. Price Blackwood*, sworn.

*Joseph Goff*, ditto.

*William Snell Magee*, ditto.

*Matthew James Plunkett*, set by on the part of the crown.

*James Donovan.*—

*Mr. Burne.*—Have you made any declaration upon this subject?

*Mr. Donovan.*—I never did, directly or indirectly.

*Lord Chief Justice.*—It has been over and over determined, that a juror is not bound to answer that question.

*James Donovan* was sworn.

*William Colville, jun.* set by on the part of the crown.

*Thomas Jameson*, sworn.

*Thomas Rochfort*, My lord, I am subpoena'd as a witness upon this trial.

*Lord Chief Justice.*—That is no legal objection to the gentleman being sworn; but as the gentleman himself has stated the circumstance, it might be as well that he should not be sworn.

*Mr. Attorney General.*—My lords, this may be used as a contrivance, to prevent the gentleman from being sworn. I beg to ask the gentleman, whether he knows any thing of the matter of this trial respecting which he can give evidence.

*Mr. Rochfort.* I protest I do not.

[He was then sworn.]

*John Leland Maquay*, set by on the part of the crown.

*Thomas Prentice*, sworn.

*Folliott Magrath*, do.

*William Armit*, do.

*William Watson*, set by on the part of the crown.

*Edward Hendrick*, do.

*Ralph Shaw.*—My lord, I have been summoned as a witness in this case.

*Mr. Attorney General.*—Do you know any thing of this cause.

*Mr. Shaw.*—I do not.

[He was then sworn.]

*Richard Cooke*, set by on behalf of the crown.

*Thomas Meade*, do.

*Richard Cane*, sworn.

*Thomas Read*, do.

#### THE JURY.

<i>Mon. Price Blackwood,</i>	<i>Thomas Prentice,</i>
<i>Joseph Goff,</i>	<i>F. Magrath,</i>
<i>W. S. Magee,</i>	<i>William Armit,</i>
<i>J. Donovan,</i>	<i>Ralph Shaw,</i>
<i>Thomas Jameson,</i>	<i>Richard Cane,</i>
<i>Thomas Rochfort,</i>	<i>Thomas Read.</i>

*Mr. Justice Day.*—If there be no probability of the trial closing this day, this will be a good time to fix an hour at which to adjourn; in this I hope that the gentlemen on both sides will agree. I have suffered so much in my health from late sittings, that I wish there may be some arrangement of this sort.

*Mr. Attorney General.*—My lord, we shall

have no objection to an adjournment, if necessary, but as yet, we cannot say how it may turn out.

*Mr. Burrows.*—My lords, I wish to save time; I have no desire, on the part of my client, to conceal any fact. We are anxious to have the law decided by the *demier resort*. No judge can be displeased at this suggestion. Every adjudication is subject to revision and correction. The judgment of the *demier resort* deciding upon it will be conclusive, if there be a special verdict finding the true facts of the case. The counsel may retire to confer upon it; and I think it possible, that such a finding may be agreed upon as may prevent any discussion, and set the question at rest for ever. There is no doubt, that my client will comply with any proceeding which will enable him to have the opinion of the *demier resort*; and if that opinion should be against him, it would be submitted to for ever, unless parliament should alter the law.

*Mr. Attorney General.*—My lords, I consider this a monstrous proposition, as addressed to me. As if I could agree to a special verdict, in a criminal case, unless there were doubtful questions of law! But after the Court has pronounced its judgment upon this subject; after it has been agitated and discussed in the fullest and ablest manner upon every point of law; and after the court has pronounced its unanimous decision, the counsel on the other side call upon me, to give the sanction of my office to consent to a special verdict, as if the matter so decided by the Court was still doubtful. My lords, the gentlemen suggested no such thing upon the first trial; but after the law has been settled according to the principles upon which these prosecutions have been instituted, I am called upon to consent to a special verdict. My lords, I should betray the Court, I should betray myself, if I gave into such a proposition. The jury have a power of finding a special verdict, if they should think proper; or the Court may reserve the subject for the opinion of the twelve judges, as in any ordinary criminal case.

*Mr. Burrows.*—I am delighted, that I have made the proposition.

*Mr. Gould.*—We do not consider the law as settled.

*Mr. Kemmis* opened the indictment, which stated, that on the 6th of July, 1811, divers persons assembled at Fishamble-street, to appoint a committee of Roman Catholics, to exercise an authority to represent the inhabitants of Ireland professing the Roman Catholic religion, under pretence of casting petitions to both houses of parliament for the repeal of all laws remaining in force in Ireland, whereby Roman Catholics are subject to any disability; and under pretence of procuring an alteration of the said matters established by law, entered into certain resolutions of and

concerning such committees—and the said laws, and of certain districts in Dublin, called parishes—setting forth the import of the resolutions, and that the traverser, with others, on the 31st of July, 1811, at Liffey-street, Dublin, in order to comply with such resolutions, and to aid, and assist in the forming of such committee, did assemble, to appoint five persons, to act as representatives of the inhabitants professing the Roman Catholic religion, of the district commonly called the parish of St. Mary, in the said committee, so proposed to be formed; and that Edward Sheridan, M.D. was unlawfully appointed to act as one of the said representatives—and that the traverser was one of the persons so assembled, and voted and acted in the said appointment.—The second count in the indictment, charges the traverser with attending, and acting in the meeting at Liffey-street, on the 31st of July, as in the first count, but without referring to the resolutions of the 9th of July.

The Defendant has traversed this Indictment.\*

Mr. *Attorney General*.—My lords and Gentlemen of the Jury. I did entertain a hope, and I say sincerely, I did feel an ardent wish, that it should not have been rendered necessary for me to proceed any farther upon the indictments which had been found in the last term. I had entertained hopes, that although the authority of the king's government should not have been sufficient for the purpose, that, at least, when the supreme court of criminal jurisdiction in the country had solemnly pronounced the Roman Catholic committee to be an unlawful assembly, the persons composing it would have bowed to the law, and desisted from the project of establishing such an assembly. But I entertained that hope in vain. Finding a determined and persevering resolution in those who compose that body, to act in defiance of the king's government in this country, and to trample upon the laws of the land, it becomes the duty of every good subject—it becomes the duty of every man, who wishes well to the peace of the country, and the preservation of that happy constitution under which we live, and in defence of which, I trust, all of us are ready to die—but more particularly, it is the duty of the government, who are the peculiar guardians of that constitution—to enforce the law, until those persons shall be brought to a sense of that respect which they owe to the king's government, and of that submission which they owe to the laws of their country.

My lords and gentlemen, after the trial of Doctor Sheridan, one of the traversers, who was indicted for a similar misdemeanor, I solemnly declare that I should not have brought the present case to trial, if I had entertained a shadow of doubt, either on the law or the fact

of the case. But when neither I nor my colleagues entertain a shadow of doubt upon the law or the fact, with which the traversers stand charged, and seeing the persevering disposition to outrage the king's government—to bid defiance to the lawful authority of those who are put in authority under him, and (what is still more alarming to the mind of every man) to see a determination avowed, to trample upon the law—it became an indispensable duty to proceed against every man who directly or indirectly has been concerned in abetting or promoting the establishment of this unlawful assembly.

I need not take up much of your time in calling your attention to the objects and views of those persons calling themselves the committee of the Roman Catholics of Ireland. Their avowed object briefly is, to establish in this metropolis a national or Roman Catholic convention, consisting of the Roman Catholic peers; the eldest sons of the peers; the Roman Catholic prelates; the Roman Catholic baronets; ten representatives from every county in Ireland, and five representatives from every parish in the city of Dublin, to constitute an assembly of not less than five hundred persons, exceeding in numbers the legislature of this country, when it had its separate legislature, and this, under pretences of managing the affairs of the Catholics, with regard to their petitions to parliament.

I need not dwell upon the obvious dangers to the laws and the constitution, of which the existence of such an assembly must necessarily be productive, in any country in which there is the name of a government; the inevitable tendency to revolution and anarchy, and the horrors of civil war with which such an establishment is pregnant: it is enough, for the present purpose to know, that such an assembly is altogether contrary to law.

The government of the country, if the country be true to itself, will, under the blessing of God, by a steady application of the law, slow perhaps but sure—put down that assembly. Such is the determination of government on both sides of the water. It is therefore the duty of every man, and particularly of those who are invested with the character of jurors, to discharge their duty with firmness; in the exercise of that sacred duty, to divest themselves of every prejudice, every personal and political consideration; to listen not to the suggestions of hope or fear, or to dread the resentment of a vindictive party; but to act the part of honest and brave men, pronouncing their decision upon the fact, according to the evidence, and looking to the Court for the exposition of the law. I am sure, gentlemen, you are incapable of giving any verdict, but such as is according to law and the evidence. I ask no more at your hands; if you have any rational doubt, I do not ask a verdict, acquit the traverser. But if you are satisfied that the charge is true beyond the possibility of doubt, or contradiction, and if you shall be in-

\* *Filed an indictment at length, and also the statute in Sheridan's case, ante, pp. 638. 640.*

formed by a learned and upright Court, which will not deceive you, that the act so charged and proved is unlawful—in that case—and I trust, that will be the case—you will find a verdict of guilty, without quitting your jury box.

The charges in the indictment against the traverser, are briefly these, and I beg your attention to them;—It is charged by the indictment, that on the 9th of July last, an assembly calling itself an aggregate assembly of the Roman Catholics of Ireland, met in Dublin (the earl of Fingall presiding in the chair), and that certain resolutions were agreed upon, by which it was resolved, that elections should be held in the several counties of Ireland, for the purpose of electing ten delegates, or representatives for each county; and parochial elections in Dublin, for the purpose of electing five delegates, or representatives, from each Roman Catholic parish in the city of Dublin, to meet in a committee, or convention, consisting, in addition to those thus elected, of the Roman Catholic peers, their eldest sons, and the Roman Catholic prelates and baronets.

These resolutions were published in the papers, signed by the earl of Fingall, as chairman. I will read one or two of them as they appeared in the papers. It was resolved, that they would petition the legislature for a repeal of the laws affecting the Catholics of Ireland: they resolved that they would persevere in petitioning the legislature for a total unqualified repeal of the laws, and that the committee to prepare their petition, should consist of the persons whom I have before mentioned; and until the elections which were ordered should take place, that the management of Catholic affairs should be placed in the hands of an interim government.

That is the first matter which is stated in the indictment: it is not necessary that I should consume time, in showing that the assembly so directed to be convened would be an unlawful assembly. No man can doubt that it would be a monster in the state, pregnant with every danger to the public peace, and the security of the constitution: at present, it is sufficient to state, that the indictment charges it to be an unlawful assembly.

The next charge is, that upon the 31st of July, in the same month, within twenty-two days after, an assembly, or meeting of the Roman Catholic inhabitants of the parish of St. Mary, in this city, took place; at that assembly, or parochial meeting, the persons present proceeded to an election of five delegates; that the persons elected were delegates from this parish to the assembly proposed to be convened, pursuant to the mandates of the constituting assembly, and that Mr. Kirwan, the traverser, did act in the election of those delegates.

These are the facts charged against the traverser, and the Court will inform you, that the second section of the statute of the 33rd of the

king, commonly called "The Convention Act," upon which the indictment is founded, provides, that if any person shall give or publish, or cause or procure to be given, or published, any notice of election to be holden, of any person to be the representative, or delegate of the inhabitants of any province, county, city, town, or other district, or if any person shall attend and vote at such election, or appointment, he shall be deemed guilty of a high misdemeanor.

I have now stated briefly, but truly, the charges which are contained in the indictment against the traverser; and you will perceive, that they divide themselves into a question of law, and a question of fact. The question of law is, whether the assembly which was directed or resolved, or ordered to be convened by the resolutions of the assembly of the 9th of July, was, or was not, an unlawful assembly? It will necessarily save time upon this trial, when I state that this question was agitated, and ably discussed, upon the trial of Doctor Sheridan, and that after a full and able discussion, in which I say nothing short of the truth, when I declare that my learned friend, Mr. Burrowes left nothing unsaid upon the subject, the clear and satisfactory, and unanimous decision of the Court, was, that it was an unlawful assembly.

It is therefore, unnecessary to say a word upon that subject. We must bow to the opinion of the Court. The law upon the subject is settled, and the assembly has been pronounced to be unlawful. Why then you see, that the question for your consideration is thereby simplified into a mere question of fact; unless my learned friends, on behalf of the traverser, will endeavour to play upon you the same artillery which they directed against the former jury; unless they shall attempt to seduce you to become, by a sort of usurpation, judges of the law, where the constitution makes you judges only of the fact, to set up your judgment against the judgment of the sworn judges of the land; and to take the law from the bench into the jury box.

The former jury did acquit themselves of such an usurpation of jurisdiction, by declaring that they founded their verdict upon the insufficiency only of the evidence to prove the fact; thereby admitting that they received the law from the Court: and I have no doubt that you will equally adopt the opinion of the Court upon the law, and exercise your judgment upon the matter of fact only.

In order to satisfy you, as far as I am able, that there cannot be a doubt of the facts contained in the indictment, I shall proceed to lay before you the evidence which will be produced, in order to establish those facts. To prove that such an assembly as is alleged, was held on the 9th of July, and that the resolutions, which I have stated, were passed, we will produce a Mr. Francis Huddleston, a gentleman who had seen better days; but who, in the month of July last, was employed in re-

porting for the news-papers; he will swear that he was present at that assembly; that it was a full assembly; that lord Fingall, whom I have the honour of seeing in court, as I did upon the former trial, was present; that the resolutions stated in the indictment were passed, and particularly the resolution which directed the unlawful assembly to be convened.

I presume that this witness will be cross-examined, as before he was cross-examined. That was a cross-examination, as if the witness was an accomplice in a crime—as if he came forward with a tarnished character, to sustain facts of a doubtful nature against the persons accused. His character, and the transactions of his life, were ransacked; and he was tortured as if he were a man of the description which I have mentioned; as if there had been some ground of imputation upon the purity of his character; the cross-examination was conducted as if the question for the jury to decide were the degree of purity in the character of the witness, and not whether the evidence which he gave was true. Your own experience must remind you that it happens every day, even in capital cases, that the crown is under the necessity of resorting to the testimony of a witness, who admits himself to be an accomplice in the basest transactions and the blackest crimes; whose moral character is utterly given up. But the question always is, not whether the witness be a person of a pure and moral character or not, but whether the testimony which he gives be true. It is possible for a man of an impure character to tell truth in a court of justice; and, therefore, you will guard your minds against the attempts which will be made to throw doubts upon the character of Mr. Huddleston, which cannot be done; as if you were sitting to decide upon the purity of his character, and not whether the facts deposed by him be true or false. There is nothing which can impeach his character, or its purity: but, even if there were, you are not to decide upon that, but to declare your opinion whether the facts alleged by him be true or false. Surely this is not a case in which the Court or the jury are called upon to be peculiarly astute in probing the character of a witness. Where a witness is produced to establish a doubtful fact—a fact disputed between the parties, and at which no other person was present but himself and the accused, it would be the duty of the Court and the jury to sift the witness to the bottom; his character and his testimony should be then well-weighed; and why? because if he were deposing what was not true, the accused would have no means to contradict him. But was there ever such an insult offered to the understanding of a jury, when a witness, uninterested, swears positively to a transaction which took place in open day, in an assembly of hundreds, where lord Fingall, who is in court, is stated to have been in the chair; where other persons are named, as being present, and who were present in court at the examination of the wit-

ness, and who were competent to contradict him if what he stated was not true, and who are not produced, and cannot contradict him? Let me appeal to the common sense of any jurymen whether he can doubt that the witness tells the truth, when he deposes that such an assembly was held, and that such resolutions were passed, and which were afterwards published in all the news-papers, with lord Fingall's title of honour subscribed, as chairman of the assembly. Look at each other, and ask yourselves whether you can entertain a doubt that such an assembly was held on the 9th of July, because you might entertain a doubt whether the witness be not of a doubtful character; because it is insinuated, by cross-examination, that he entertains loose notions upon the subject of religion? Then there is evidence that there was such an assembly; and we will do now what we did before—what my learned friend, the solicitor-general, pledged himself to, in his observations to the jury.—That if my lord Fingall will get up and declare, upon his honour, that there was no such assembly, or that no such resolutions were passed, we will give up the prosecution. After all this, can the understandings of a jury submit to the imposition of being told that they ought not to credit the evidence of Mr. Huddleston?

I come now to the other facts of the case; whether there was a parochial meeting of Saint Mary's parish, for the election of delegates, and whether the traverser took any part in that election. To establish the affirmative of these questions, two witnesses will be examined, persons deputed from the head office of police, on the 31st of July, in order to ascertain the proceedings of the meeting, which they had received information was to take place on that day; they were employed by the magistrates for the purpose; men utterly and absolutely disinterested—liable to mistake, as all men are; but it is out of the nature of things that they could misrepresent any thing by design. They will each positively swear that there was such an assembly at Liffey-street; that it was a numerous assembly; that they saw the traverser there; that they saw Doctor Sheridan there; and that the assembly proceeded to the election of delegates, in a novel and a solemn way. They chose five representatives or delegates, the exact number directed to be elected by the assembly of the 9th of July. These five persons were elected to prepare a petition to the prince regent and the parliament, and to represent this parish in the Roman Catholic committee.

These two witnesses swore positively to these facts. There was no evidence to contradict them; there was no evidence to impeach their credit, as men of integrity; but they were cross-examined, and, so far as the ingenuity of counsel could accomplish it, they became puzzled and perplexed, as most witnesses might be under such circumstances; and all this calculated to bring discredit upon their character and upon their testimony.



The observations which I have made upon the testimony of Mr. Huddleston, apply more strongly here: There are two witnesses to these latter facts; to the others there was but one. The transactions, to which they depose, also took place in open day; there was a multitude of persons present, all of whom were competent witnesses, if there were any mistake in the evidence. If they were not electing delegates, but officers to conduct the ordinary business of the parish, nothing was so easy as to show their mistake, and prove what was the real business of the assembly. But if no contradiction is offered, would an imputation upon their character, if such there were—however there is none—warrant you to say that what they state is not true? Can you believe that the magistrates had an object in sending these men to the meeting, with an intent that they should make a misrepresentation, in order to found a prosecution of innocent men? Will any suggestion of that kind make its way into the mind of the jury? It is possible that the witnesses might make a mistake, but that they should misrepresent, by design, is altogether impossible. They made depositions of the facts which occurred, and upon those depositions government acted, and instituted these prosecutions. There is no witness to contradict their testimony, and the question will be for your determination, whether they have sworn true.

It is admitted that we did not prove, by direct testimony, that those delegates, so elected to prepare the petition and to represent the parish, were delegates to the identical committee which was proposed by the resolutions of the 9th of July. You will observe that it was a parochial meeting, held twenty-two days after; that the delegates elected were to represent the parish, and to prepare a petition, coinciding in the number, and for the purpose directed by the order of the 9th of July.

Now the evidence to establish a fact need not be positive: it may be established, even in capital cases by circumstantial evidence. If facts be proved to the satisfaction of a jury, from which, fairly and rationally, an inference arises that the fact alleged is well founded, a jury will find their verdict accordingly. Now, I ask you whether the inference here does not necessarily arise that those delegates were elected to represent this parish in the committee which had been directed by the assembly of the 9th of July? And whether that inference is not strongly confirmed by the suppression of evidence on the part of the traverser, who could rebut it by showing that the election was for another purpose?

Doctor Sheridan is stated to have attended, and acted in that assembly. He is, unquestionably, a competent witness. Every man who was present at that assembly is a competent witness for the traverser, to prove that no such delegation took place as is alleged by the witnesses for the prosecution.

If, then, there be a total suppression of evidence on the part of the traverser, what is there upon which the doubt of a jury can, for a moment, be hung? Certainly the former jury after hearing this evidence returned a verdict of acquittal, founded upon their opinion that the evidence was insufficient.

That verdict cannot be given in evidence to you. I should not care if it could be so, but even if it were legal evidence, still, the question for you to decide would be, whether that was a right or a wrong verdict. If it were right, of course your verdict would be the same; but if it were a wrong and absurd verdict, if it were a verdict so erroneous that the gentlemen who found it ought to be ashamed of it for its absurdity, for I am not warranted in supposing, nor do I, by any means, intend to insinuate that these gentlemen were influenced by any improper motive, by any personal or political consideration; that any expectation or hope, any apprehension or fear, operated on their minds, would such a verdict be a ground on which your verdict ought to be founded?

It will appear still more ludicrous that there could be such a verdict, when I state the manner in which, I presume, the traverser will be defended; because another traverser, upon the former trial, was so defended. My eloquent and able friend, who displayed so much ability and eloquence upon that trial; eloquence which derived great additional strength from the enthusiasm which fires him when he treats on the subject of Catholic rights and claims, but whose candour surpasses his eloquence or his enthusiasm. He never looked up to the jury and told them that the charge, in point of fact, was not true. Such an assertion did not ever escape from him; but, in the whole elaborate speech, which took up three hours, and which deservedly acquired him much credit, he never, as I recollect, once alleged that the fact charged was not true. But the whole of his argument went to justify the fact, and not to deny it. With consummate ability he argued the question upon the "Convention Act;" a question altogether unnecessary if there was no such assembly, or if the traverser was not there. Why trouble the Court or the jury with canvassing the law, and proving that the Roman Catholics have a right to hold such an assembly in the metropolis of the country, if, in truth, there had been no delegation to it? The whole of the elaborate speech of the learned counsel went to a vindication of the fact, and not a denial of it.

I appeal to your own experience, whether you, upon a trial for an assault, or false imprisonment, or any other offence, found counsel employed to justify the fact—to prove that the person accused had a right, and was warranted by law to do the act charged against him, when in fact, no such act had ever been committed. It is true he did endeavour to throw imputations upon the witnesses, yet his counsel would not allow him to call upon the jury to

disbelieve the fact of the existence of such an assembly, or the resolutions which were passed, or that such an election as stated was held in St. Mary's parish, or that delegates were elected to the Roman Catholic committee. His whole effort was, to convince the Court and the jury that such proceedings were frightful; founded upon law and usage, and the practice of 50 years, during which the Roman Catholics had their committee and their delegates:—and my learned friend told me, I was in *Babylon* darkness, when I was ignorant, that the Roman Catholics had, during all that period, their committees.

I was, I confess, in ignorance, that they ever presumed, in defiance of the authority of the king's government, to issue a mandate for holding county and parochial elections, for the purpose of returning and preparing to form an assembly of 500 persons to represent all the estates of the Roman Catholics of Ireland, and to hold their session in this metropolis. If I have been in *Babylon* ignorance of such a phenomenon—I am happy to have been so, because the country would not, in my opinion, be worth living in if such a convention should be tolerated. I love my Roman Catholic fellow subjects, as well as any man; but that this country should be governed by a Roman Catholic parliament, is an innovation to which I cannot submit. Whatever may be the claims of the Roman Catholics, they must be submitted to parliament, they must be there canvassed and discussed. My learned friend, who argued with so much force on the former trial, that those claims should be conceded by parliament, did on such argument introduce a topic having no connection whatever with the subject of the trial, and calculated to mislead the jury. If it were ever so strongly proved, that parliament should concede those claims, by what logic would it follow therefore, that you ought to acquit Mr. Kirwan of the charge made against him of having violated the laws?—Therefore if he shall argue that question again, you will be on your guard, and prepared with this answer to him, that it is a subject with which on this trial we have no concern. It is a subject for parliament, and parliament alone. Our inquiry is, whether the traverser has committed certain acts, and if so, whether they amount to a violation of the law of the land. Consult your understanding in deciding upon the facts; and listen to the Court, in pronouncing its judgment on the law—having so done, I have no hesitation to say, that you must find a verdict against the traverser without quitting the jury box.

*Francis Huddleston, esq. sworn.—Examined by Mr. Solicitor General.*

Did you attend at any public meeting on the 9th of July last?—I did attend at an aggregate meeting of the Catholics, on the 9th of July last, in Blakemill-street.

Was it numerously attended?—Very numerously.

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Who presided?—The earl of Fingall.

Do you see his lordship in Court?—I do.

Did any person act as secretary?—Yes, Mr. Hay did.

Did you see that gentleman here this day, or yesterday?—I cannot say that I did.

Were any resolutions proposed, or read in your hearing, by any person, and whom?—There were.

By whom were they proposed?—Counselor O'Gorman moved four resolutions.

Before he spoke was there any matter read to the meeting?—The business of the meeting commenced by Mr. Hay reading a resolution which was passed in an aggregate meeting some time before.

What was the nature of that resolution, as you remember.

Mr. Gould.—That resolution was in writing; you took a copy of it; have you got it here?—I have endeavoured to get it, and will see if I have it here. [Witness produced a paper.] I have a note of it.

The resolution was read from a written paper?—The resolutions were generally entered in a book.

But the resolution was read by some person or other?—It was.

Mr. Solicitor General.—I suppose this examination is intended as introductory to some objection; but I must persevere in the question.

Mr. Perrin.—My lords, I object to this question; because I think it different from the objection which was made upon the former trial. I conceive, that if a witness be permitted to give evidence by parol of such a proceeding, he ought to state the precise words, and not what he conceives to be the import of them. Where he does not recollect them accurately he must be silent; and not put upon the court his vague recollection. It is for the jury, under the direction of the Court, to say, what the import of the resolutions was. The traverser is upon his trial for a misdemeanor; and in order to support the charge, it is necessary to prove certain resolutions; which it is alleged will show the criminal intent; whether they will or not, will be a question for the jury, and for the jury only, and that intent is not to be stated by the witness upon the table; neither ought he to state what he conceives the import to have been; he ought to state the very words which he heard. It cannot be permitted, that a witness should state what he conceives the import of the proceeding to have been; because then the guilt or innocence of the party accused would depend, not upon the words used by him, but upon the character or temperament of the witness.

The attorney-general may attach one particular meaning to a clause or resolution; the witness may attach another meaning; and Mr. Barrowes may attach a meaning different from either; and if those two learned counsel were examined as to the import of the resolutions;

their testimony would differ exceedingly. Therefore, the witness should be kept strictly to the words; where he recollects them, they may be stated; if he does not recollect them, he should be silent. My lords, there is a direct authority upon this point, in 2 Hawk. 616—"It seems agreed, that it is no evidence in any criminal case, that the defendant said so and so, or words to the like effect; because the court must know the very words, to judge of their force and effect." This passage is founded upon a very respectable authority, the case of *Hussey v. Cooke*, Hob. 294. It was a case in the Star-Chamber, but that does not lessen its authority in this respect. It was determined, "that if a witness depose, that the defendant did persuade a juror to appear and to do him reasonable favour, or words to the like effect, this is no sufficient proof in criminals, because the court must know the very words, to judge of their force and effect."

*Lord Chief Justice.*—These are cases where the party upon trial was indicted for using the very words.

*Mr. Perrin.*—My lord, that will make no difference.

*Lord Chief Justice.*—But I want to know how the fact is: was the party tried upon a charge of using the particular words?

*Mr. Perrin.*—My lord, the fact is not so; it was a case in the Star-Chamber; but that, I conceive, does not weaken its authority in this respect.

*Mr. Justice Day.*—That doctrine was held in the case of indictment for a libel.

*Mr. Perrin.*—Yes, my lord, because the libel must be produced.

*Mr. Justice Day.*—But even in the case of slanderous words, it is sufficient to state the words in the pleading and to support them in proof, by the recollection of the witness of the general import.

*Mr. Perrin.*—My lord, I admit that; and that the import of the resolutions may be proved; but the witness should state the very words according to his recollection.

*Mr. Justice Day.*—Does not the case cited negative the doctrine?

*Mr. Perrin.*—No, my lord, the witness must give in evidence the very words, and leave the Court and the jury to judge of the import.

*Lord Chief Justice.*—Mr. Solicitor General, we think you may proceed.

*Mr. Solicitor General.*—What was the purport of the resolution which was read by Mr. Hay?—I believe I can give you the exact words; it was, "that an aggregate meeting of the Catholics of Ireland be convened on the 9th of July, to receive the report of the Catholic committee, and to take into consideration the propriety of presenting petitions to

"parliament on an early day in the ensuing session."

After that was read, were any resolutions proposed?—Not immediately; Mr. O'Gorman made a speech of considerable length.

After that were any resolutions proposed?—There were.

By whom?—By Mr. O'Gorman.

Were they carried?—They were, unanimously.

Who put the question upon them?—The earl of Fingall.

Can you state the import of these resolutions?—I can.

Be so good as to state them?—The first resolution was, "That being impressed with an unalterable conviction of its being the undoubted right of every man to worship his Creator according to the genuine dictates of his own conscience, we deem it our duty, publicly and solemnly to declare our decided opinion, and principle, that no government can, with justice, inflict any pains, penalty, or privation upon any man, for professing that form of Christian faith, which he in his conscience believes."

What was the second resolution?—"That we shall, therefore, persevere in petitioning the legislature for a total and unqualified repeal of the penal laws which aggrieve and degrade the Catholics of Ireland."

What was the third resolution?—It stated, "That in exercising the undoubted right of petitioning, they would continue to adhere to the ancient principles of the constitution."—And here I have added an &c.

Do you now, recollect any thing more of that resolution?—I perfectly recollect, from having seen the resolution in the *Dublin Evening Post*, "That they would conform to the restrictions imposed by modern statutes," or words to that effect. I mention the &c. as marked in my notes; because it shows, that there were other words, which I did not take down; but I perfectly recollect this latter part, of conforming to the modern statutes.

What was the fourth resolution?—I am not quite so accurate, with respect to that: it was, "That a committee should be appointed to inquire into the penal laws affecting the Roman Catholics of Ireland, and to report within one month."

What was the fifth resolution?—Mr. John Byrne came forward and proposed another resolution, "That the committee to be formed to prepare the petition to parliament, do consist of the Catholic peers, and their eldest sons, the Catholic baronets, the prelates of the Catholic church in Ireland, and also ten persons to be appointed by the Catholics in each county of Ireland, the survivors of the delegates of 1793, to constitute an integral part of that number, and also of five persons to be appointed by the Catholic inhabitants of each parish in Dublin."

*Mr. Justice Day.*—Did you say 1803?—No, my lord; 1793.

Was there any other resolution?—There was, with respect to grants of money to individuals, and thanks to members of parliament.

Was there, to your knowledge, any publication in the newspapers purporting to be an account of these resolutions?—There certainly was; I saw them in the *Dublin Evening Post*.

*Mr. Solicitor General*.—My lord, I have no right to ask as to the import of such publications; I have merely inquired, whether there was such a publication.

*Mr. Huddleston*.—My lords, previous to my being cross-examined, I consider it most material to the establishment of the consistency of my evidence, and most important in other respects, that I should be permitted to explain a circumstance which occurred on the last day I was examined as a witness in this court. I have sworn to tell the whole truth, and nothing but the truth; and I feel, most acutely, any misconstruction that my words may receive from not having an opportunity of explaining them.

My lords, the learned gentleman who cross-examined me on the last day, had observed me reading certain papers—he asked me what they were? I told him, that one of them was a copy of a private letter, and the others were newspapers, containing the printed report of these proceedings. Upon being questioned farther, I stated, that it was a private letter written to sir C. Saxton, in March last, and that it had a collateral bearing on the subject of delegation. A great deal was said, relative to the refreshing of my memory; and how far my words have been tortured and perverted on that occasion, I shall not enter into; but I will just observe, that no event was ever more indelibly impressed on my recollection, than the fifth resolution, and the circumstances which attended the passing of it. In the first place, I had been in the habit of hearing Mr. John Byrne speak, frequently, at the Catholic committee; and I had acquired a greater facility in sifting down that gentleman's words, than those of most other persons. In the second place, his retiring to an adjoining room, with some other gentlemen, and the bustle which prevailed there, excited in my mind an expectation of something unusual; and lastly, when he did propose the fifth resolution, I was much surprised, as I felt that it was in the teeth of the circular letter which had been issued by government to the magistrates some time before. My memory, therefore, required no refreshment with respect to this resolution. But, my lords, though the learned gentleman would not suffer me to repeat one word of this letter, he did, nevertheless, in his address to the jury, impeach my evidence, on the ground of this untold document. He held up to ridicule the obvious fact, that subsequent events may be more clearly definable and better understood, by connecting and comparing them with the corroborating chain of preceding ones. My lords, I will now repeat this extract, to show

that my evidence, in this particular, was not inconsistent.

On the 15th of December, Mr. O'Connell moved (in the Catholic committee), "That a sub-committee be appointed, to take into consideration the best method of extending their communication with the country parts of Ireland." On a subsequent occasion, Mr. Hay was directed, by the "report of this sub-committee, to write letters to the principal Catholics of the different counties, to acquaint them of the resolution that had been passed, of adding to the committee then sitting in Dublin, ten persons from each county in Ireland." On the 6th of February, Mr. Cornelius Keogh, a member of the committee, who had been absent at the passing of the foregoing resolution, came forward, and moved, "That the proceedings concerning the appointment of ten members from each of the counties, exceeded the powers of the committee, and ought to be immediately rescinded." A debate ensued, in which Messrs. O'Connell and Hussey opposed the motion; the former, on the ground of informality, a week's notice of it not having been given; the latter, on the principle of a delegation giving life to the metropolis, and the impropriety of sending gentlemen back who had been already invited thither. Mr. Clinaugh proposed an amendment—"That the farther augmentation of the committee be referred to an aggregate meeting."—This was lost, as well as the original question; and the resolution of admitting delegates remained in force. At the termination of the debate, on that day, I was particularly requested not to publish the words "delegation or deputation."

My lords, I have now finished the explanation which I considered it my duty to make.

*Mr. Barrowes*.—My lords, I think this is good evidence, to show a communication with the Castle—and how much better a suspected witness may appear now than he did upon a former occasion.

*Mr. Solicitor General*.—I did not inquire respecting these circumstances, as not bearing upon the meeting of the 9th of July. But the gentleman wished to explain himself.

*Mr. Barrowes*.—The witness has overwhelmed us with a display of eloquence. I hope it is not to be considered as legal evidence.

*Lord Chief Justice*.—I have taken no note whatever of what the witness last said.

*Francis Huddleston, esq. cross-examined by Mr. Gould.*

*Mr. Huddleston*, you are now in a very curious situation. Are you more pleased with the speech which you have made, or with the manner with which it is received?—I am glad to have had an opportunity of explaining how the letter had a bearing upon the matter to which I was examined.

Pray how do you reconcile it (after taking so

much time since the 21st of November; when they were last examined), that a letter written in March, refreshed your memory as to transactions which occurred in July following?—I had not an opportunity allowed me of explaining it; if my memory did require to be refreshed, which it did not, I could reconcile it by a corroborating chain of preceding matters.

Do you understand what you have now sworn?—I do.

Then I apprehend that no person but yourself understands it; it is obscure and partakes of the sublime.—A subsequent event may be brought to recollection, by reference to a prior event.

That appears extraordinary.—It may be done by a chain of circumstances.

We have not so great a range of intellect; perhaps you are a poet—have you ever written poetry?—I have.

You are as high a poet as ever I saw. You, I suppose, thought, that this resolution of petitioning parliament was a very bad resolution; understand my question, did you think that the mere purpose of petitioning parliament was improper?—I did not think petitioning parliament was improper; but there may be improprieties in the mode.

Did you ever hold an office under government?—I did.

Do you now?—No.

Do you intend to hold one?—I cannot tell.

Would you take an office if it was offered to you?—I would.

Then *Nolo Episcopari* is not your motto. Have you, since the last trial, made any overtures, directly or indirectly, respecting your promotion?—Never; I swear it most solemnly.

Was there not any communication with government?—Not at all.

Not any communication whatever?—Not since I was here the last day.

Upon any subject whatsoever?—None, except being told that I was to come here, and being applied to with respect to the evidence I had given.

Had you any communication with any other person than Mr. Kemmis?—Mr. Sergeant Moore was present at it.

I do not wish to inquire respecting any thing at which sergeant Moore was present, because I am convinced that there was nothing improper in it; give me leave to ask you, where did the communication take place?—In the sheriffs' prison.

Mr. Huddleston, you have had in your hands, this day, two papers; one appeared to be in manuscript; the other in print; what is that printed paper?—It is the newspaper in which I reported the proceedings of the aggregate meeting of the 9th of July.

Did you look at those papers?—I did in court.

For what purpose?—A gentleman addressed the court, just now, to say, that I should state the exact words; and I knew that I had the exact words; I knew the import of all the re-

solutions; but as to some of them, I wished to know the exact words, which I could from that paper.

Did you look at the other part?—I did.

Was your memory refreshed?—It was, as to the date, 1793.

Then you had your memory refreshed?—There was nothing more indelibly impressed upon my recollection than every iota of the fifth resolution, and how far the words may be tortured into a different meaning I cannot say.

Mr. *Solicitor General*.—I beg pardon for interrupting Mr. Goold. There is some misunderstanding with respect to the dates; the witness has been asked whether he had not his memory refreshed with respect to the resolutions being in 1803 or 1793.

Mr. *Goold*.—My lord, I beg to ask the witness, if he made any mistake?—I believe not.

One of the judges corrected you, and you said 1803?—No, positively not.

You said, that the committee was appointed to prepare a petition; is your recollection as accurate now as it was upon the last trial?—My recollection has been accurate from the moment it was pronounced to this hour.

And therefore there was no variance between the evidence which you gave then, and that which you have given now?—I am sure there is not.

You did not mention the year 1803?—I did not, I said 1793.

Did you give the precise evidence this day, which you did upon a former?—I will not say, precisely, as to the first, second, third, and fourth resolutions; but as to the fifth, I am positive; I am perfectly aware of the importance of it, because, if you refer to the printed report, there is an inaccuracy in this particular; it states, that I said the said committee was to consist of, &c. Whereas, I said, "that the committee to prepare a petition to parliament was to consist of, &c."

You read your recantation, upon your oath, in open court?—You compelled me.

Have you not recanted since?—I have not.

Then, I cannot call you a relapsed papist?—No, nor you never will.

Will nothing tempt you?—No.

If you were offered a Catholic bishoprick, would not that tempt you?—No.

Nor a place of five thousand a year?—Oh, no.

That ejaculation may convey more meaning than a speech?—I say, that no money would tempt me to change my private opinion. If I were corrupt enough to receive emolument, I would not adapt my tenets; I might go to mass out of courtesy.

Are you an unwilling witness?—No, I am not.

What has changed the inclination of your mind, since the last trial?—I never was an unwilling witness.

Did you not swear that you were?—I said, I was unwilling to undergo the obloquy to which I knew I would be exposed.

If you swore more than once upon the last trial that you were an unwilling witness, did you swear true?—I could not swear it.

Did you, if you deposed to that fact, swear the truth?—I do not understand the question. I told you, I am not an unwilling witness, nor was I. I am not in the habit of speaking untruths; but you have a prejudice against me.

I have done with that part of the case: but you will please to answer another question. You say, you never told an untruth?—I said, I was not in the habit of telling untruths. Never told an untruth! Is there any man could come upon the table, and say he never told an untruth?

Did you ever give under your hand, that you told an untruth?—Unless you bring the matter to my recollection, I do not recollect.

It is a remarkable circumstance in one's life. Did you ever give under your hand, that you had said what was not true?—I do not understand the question.

Do you mean to swear, that you do not understand the question?—I understand the question; but I cannot ransack my memory for the matter to which you may allude. I have no recollection of such a thing.

Did you ever sign any paper in this country, in which you have been ten or eleven years, derogatory to a man of honour?—I do not feel I can answer the question. If you will state any particular transaction, which may bring matters to my recollection—

Did you ever sign any paper, denying any assertion which you had made?—I do recollect to have signed a paper. Is it fair to go into the particulars? the subject involves a third person; but if you press the matter, I will answer it; it was a paper in which counsellor Bethel was concerned.\*

Was Mr. Kirwan at that meeting in Fishamble-street?—Not to my knowledge: I do not recollect to have seen him until the last trial.

Were there not a great number of men of very considerable property, and high character, at that meeting?—I believe there were.

Do you happen to be acquainted with the earl of Fingall?—I had the honour, some years ago, of being acquainted with his lordship, and dined at his house.

Whether you comprehend the Catholics, Protestants, Presbyterians, or others, there is no man more distinguished for his loyalty?—I do believe he was a loyal man.

And distinguished for his loyalty?—I believe he is a loyal man; but whether he is distinguished for it, I cannot say.

Mr. Justice Day.—Were you here in the year 1798?—My lord, I was not. I came here in the year 1799, from Cambridgeshire.

Mr. Gould.—Was it not the known and general reputation, that lord Fingall was a man

distinguished for his loyalty?—I do not recollect any particular distinction coming to my knowledge.

Do you believe him capable of presiding at an improper meeting?—It will require a long paragraph to answer that question.

What is that which you have in your hand?—An almanac.

Is that to refresh your memory?—No.

Then take some other refreshment from your pocket; you seem to have much documentary matter; you have said, that you could depose positively to the 4th resolution?—No, I said I was not very accurate with respect to that resolution.

What was it?—That a committee be appointed to inquire into the penal laws and report within one month. I think that was the resolution; I took it down as such; but every man who reports is liable to mistake: my doubt arose upon the ambiguity of the words "within a month"—whether it was to be, within a month of the meeting of parliament, or a month after the resolution was passed.

But do you swear, that a resolution to that effect was passed?—I do think that such a resolution was passed.

Whatever resolutions were passed, were written?—They were.

Before whom did you swear your original informations?—Before the lord chief justice.

Are you positive, that there is no variation between the informations which you swore, and the evidence which you have given?—I have not read the informations lately; but there is nothing in them which is not true.

John Shepherd sworn.—Examined by Mr. Sergeant Moore.

Are you in any public employment?—I am a peace officer of the head police office.

Did you receive any directions to go to any particular place, in the month of July last?—I did; I was directed to go to a chapel in Lifford-street.

Did you go there?—I did.

Do you remember upon what day?—Wednesday, the 31st of July.

About what hour did you go there?—Between 12 and 1.

Was there any assembly of people, when you arrived?—There was a good many.

Did you see any person presiding?—I did; I saw Doctor Sheridan.

Do you mean the gentleman who was tried at bar here the last term?—I do.

About what number of persons were assembled?—I cannot say, as to the number, but the lower part of the chapel was very full.

Lord Chief Justice.—Have you any guess as to the number?—No, my lord; the lower part of the chapel is very large, and it was very full.

Mr. Sergeant Moore.—Do you see any person now in court, whom you saw in the chapel on that day?—I do; I saw Mr. Kirwan. Point him out.

\* This related to an affair of honour, and was not farther inquired into, Note by Mr. Ridgeway.

[Witness did so.]

Did any person address the chair, at that meeting?—Yes.

Who did?—Mr. Kirwan.

Do you recollect the nature, tendency, and substance of his address?—The first thing was a motion, for a petition to his royal highness the prince regent, and both Houses of Parliament, for a repeal of the restrictions against the Roman Catholics of Ireland, or words to that effect.

Was that proposition made by Mr. Kirwan?—Yes.

Are you sure, that was the substance of what was proposed by him?—I am.

I understand you to say, that the proposition was made in the shape of a motion?—It was.

Was it put from the chair?—It was.

Was it carried?—It was carried unanimously.

Do you recollect, whether Mr. Kirwan made any other motion?—Yes.

What was that?—That five persons be elected to represent the Roman Catholic inhabitants of the parish of Saint Mary's, to prepare the petition, and to transact the other business of the Roman Catholics of that parish, in the general Catholic committee.

Mr. O'Connell.—My lords, does not the objection, which was ably urged by Mr. Perrin, apply with great force here? the very gist of the charge in the indictment is——

Lord Chief Justice.—Let us hear what the witness says of it.

Mr. O'Connell.—My lord, it may not be necessary to take it down, if I succeed in the objection:—the case cited by Mr. Perrin did not apply directly at that time; but it does now—what this witness is going to state respects the terms of a resolution which forms the very gist of the charge. One resolution has been stated already in very different words from what it was formerly represented—as will be established; which shows the danger of suffering a witness to give the import of verbal or written resolutions. Here the witness does not give the words, or attempt to give them; he states certain words; and uniformly adds, to that, or the like effect; that is, he substitutes his understanding of the import and effect of the words, instead of detailing the words themselves.

Mr. Justice Day.—This is precisely the same objection which was made before and was over-ruled.

Mr. O'Connell.—My lord, the objection was over-ruled, because it related to a resolution which was not in the indictment—but the witness is now giving evidence of matter—part of the *res geste* of the meeting—and if the objection be now over-ruled, precedents of high authority must also be over-ruled.

Mr. Sergeant Moore.—My lords, the case

which was cited does not apply, because this resolution is not stated in the indictment, but is given in evidence, in order to show the motive and the mode of the election. What was done upon that resolution?—The question was put by Doctor Sheridan.

Was it carried?—It was, unanimously.

What was the next thing done?—The next motion made was, that seven of the persons then present, not candidates for the committee, should be chosen to elect the five.

Court.—By whom was that motion made?—By Mr. Kirwan.

Mr. Sergeant Moore.—Was that motion carried?—There was some objection to that mode; but a gentleman recommended the gentleman who made the opposition, to withdraw it; and asked the meeting, did they not know that there was a proclamation issued? That gentleman was on the left hand of the chairman, and very near him.

Was the opposition withdrawn?—It was.

Was any thing said upon the proclamation being issued?—Not a word.

Was the nature of the proclamation stated?—No.

Was the proposition put?—It was.

And was it carried, that the seven should elect the five?—It was.

Do you know how they were to make the election of the seven?—It was stated to be the usual way, for the chairman to name one; that person to name another, and so on; and it was done in that way.

Where was the election of the five by the seven to take place?—They retired for the purpose, out of my view.

Do you know, whether they went out of the chapel?—I cannot say; they went out of my view.

Did you see any of the seven?—I did.

Did you see any persons retire, after the seven were appointed?—I did.

Did any persons return afterwards?—There did.

What was the proceeding which took place after the seven returned?—Before they retired, they asked how they should know them——

Mr. Justice Daly.—What do you mean by that?—I mean what candidates they should elect; immediately on the seven being appointed, one asked, how they should know whom to choose, and he was told, they should get a list, from which they were to choose the five; and a list was given them, and then they retired.

Mr. Sergeant Moore.—Where were you situated, when this was done?—In the gallery.

When they returned, what was done?—They produced a list containing the names of the five.

What was done with that list?—On the first name being mentioned——

To whom was the list given?—I do not recollect.

Proceed then, and state what was done?—Doctor Sheridan was mentioned, as the first of the five; on which it was moved that he should leave the chair, and that Dr. Burke should take it.

Did you hear the names which were in the list, announced to the meeting?—I did.

Name them?—Doctor Sheridan, Mr. Kirwan—

Do you mean the present gentleman?—I do.

Name the others?—Mr. Taaffe, Mr. Sweetman, and Mr. Shiel.

Were these names announced before, or after Dr. Sheridan left the chair?—I cannot say whether they were before he left the chair, but they certainly were afterwards.

Did Doctor Burke take the chair?—He did.

What was then done?—He put the question upon Dr. Sheridan being a fit and proper person to be one of the five, to represent the parish in the general committee.

Was his election approved of, or disapproved of?—It was approved of unanimously.

You stated that Mr. Kirwan was there; did he continue there during this time?—He did.

Did he take a part in these proceedings?—He did, upon the whole of them.

When Doctor Sheridan's election was carried, did Doctor Burke continue in the chair?—No, he quitted it, and Doctor Sheridan returned to the chair.

What was done then?—He put the question upon the other four names, separately.

Were they approved of?—They were all approved of, unanimously, with one exception to Mr. Shiel, on account of his being absent, as I understood; however, that objection was overruled, and he was elected.

What was the next proceeding?—Doctor Sheridan left the chair, and Mr. Taaffe took it.

Before that was done, and after the election, did any person address the chair?—Yes; some of the persons elected addressed the chair.

What was the purport of the address?—Thanking the meeting for electing them, and promising to execute the trust.

You said that Doctor Sheridan left the chair, and that Mr. Taaffe took it; what was the next proceeding?—A motion of thanks to Doctor Sheridan, for his very proper conduct in the chair.

Was that motion carried?—It was unanimously.

Did Doctor Sheridan say or do any thing upon that?

[Counsel for Mr. Kirwan objected to this question, as Dr. Sheridan was not the party upon trial.]

In what parish is Liffey-street chapel?—I understand it is in the parish of St. Mary.

Were you accompanied by any person, when you went to that meeting?—I was, by M'Donough, the second clerk in the office.

*John Shepherd* cross-examined by Mr. *Burne*.

The proceedings which you have mentioned took place in Liffey-street?—Yes.

In what parish?—From what passed there, I understand it was in the parish of Saint Mary.

You said more about that the last time you were examined?—I said, I understood that it comprehended three parishes, and I understand so still.

You have heard that, and believe it?—I have heard it, but do not know it: I understand it comprehends three legal parishes; but it is generally called Saint Mary's.

What are the three parishes?—St. Mary's, St. Thomas, St. George.

This was a meeting of the Catholic inhabitants, you said, of the parish of Saint Mary?—Yes: in fact it was from their own resolutions more than any thing else, that I said so. I was told there was to be such a meeting, but my conviction arose from what I heard pass there.

You have mentioned, that there were three resolutions entered into; can you state, precisely, the words of those resolutions?—I have stated them already.

I ask a very plain question, and desire you may give a direct answer. Can you state the words precisely?—I have stated them.

That is not an answer. Can you state them precisely, now?—I cannot swear precisely to the exact words, word after word; but I state precisely the substance of them.

Can you state precisely the words of the two resolutions?—I have answered that already.

Will you take upon you to say, upon your oath, that you have answered?—I cannot say, upon my oath, to state them precisely, word after word; but I have given the substance.

Then you cannot positively state, what were the precise words of the two resolutions?—The words of the resolutions may not tally exactly as I have stated them; but I have given the substance.

Can you state precisely and positively the exact words?

*Lord Chief Justice*.—The witness has repeatedly said that he cannot.

*Mr. Burne*.—Then I take it so, that you cannot state the precise words. Can you take upon you to say positively, that the word *represent* was in the resolution?—I have stated so already.

Do you state positively that the word *represent* was in the resolution?—I do.

You said, upon the former trial, that you could not take upon you positively to say that it was?—I was not positive then.

Are you now?—I am.

Then, sir, you have refreshed your memory since the last trial?—I have.

Give me leave to ask you how?—I have two ways of doing it; I have the copy of the



information which I swore, and I found the original paper upon which the information was grounded.

Then the paper upon which the informations were grounded, and a copy of the informations themselves, were the means by which you were enabled to refresh your memory?—Either was sufficient.

But you have read both since the last trial?—I have.

Let me ask, when you read them?—I read the copy of the informations on Saturday last, for the last time.

How many times did you read them over, since the last trial?—Not often.

How many times?—I cannot say.

Did you read them ten times?—No.

Did you read them five times?—No.

Did you four times?—I dare say I did.

When did you last read your notes, or the paper upon which the informations were grounded?—I have not read them since the 22nd of November last, which was the day upon which I found them.

Then you got them on the 22nd of November?—I did.

How soon did you look for them after you were examined here?—On that evening.

Did you find them?—No.

When did you find them?—On the morning of the next day.

Where did you find them?—In my desk.

Where is that desk?—In the head office of the police.

Is it a desk of which you keep a key?—Yes.

Did you read them over?—I did.

You have them, I suppose?—I have not.

You had them not upon the last trial; you afterwards found them; you say you have them not now; what has become of them?—I gave them to the crown solicitor.

At what time did you prepare your informations?—Either upon the day of the transaction, or the day afterwards.

Were you the person who prepared the informations?—No.

Who was the person?—The clerk.

What clerk?—Mr. Crawford, or Mr. M'Donough.

Do you mean the witness who was examined here?—Yes.

Where were they prepared?—In the police office.

At what time did you get a copy of these informations?—In two or three days after they were sworn.

Who gave you that copy?—I cannot now say upon my oath, who gave it to me.

Can you not form a belief, who gave it to you?—I cannot say.

Cannot you form a belief?—I believe the second clerk copied them.

But from whom did you get the copy?—The copy of the informations lay with myself, I got a copy in the office.

Mr. Justice Day.—From whom?—From

one of the clerks; there are two of them, and I cannot say from which.

Mr. Burne.—I appeal to the recollection of the Court, whether you did not say, that you got a copy two or three days after the informations were sworn.—You may retract if you please?—I do not wish to retract any thing; the first informations drawn out, lay constantly in the office, and were in fact the original the copy taken from was sworn.

Recollect yourself; did the original informations remain in the office?—The informations which were sworn did not remain in the office.

Whom did they go to?—To the Chief Justice.

If they were sworn before him, they must have left the office?—Certainly.

Then, where did you get the copy after they were sworn?—I got a copy in the office, but from whom I cannot say.

Then there were informations in the office besides those which were sworn?—There were.

Were they different from those which were sworn?—No sir, understand me; I kept a copy of the informations.

Recollect yourself, sir?—I cannot add any thing more.

Have you been able to recollect from whom you received a copy of the informations?—It was a draft of the informations made before they were sworn.

When did you get that?—On the first or second day after they were fairly drawn out.

Do you mean before or after they left the office?—They never left the office.

But was it after the original informations were sworn?—I cannot swear to that.

What do you believe as to the time you got it?—I cannot say; it was very shortly.

Was it a day?—I will not swear it was more.

Was it less?—I will not swear to such particular time.

You ought to be able to swear to the particular time, when you state the words of resolutions: it was two or three days after the transaction; that you got the copy?—Not a copy, but the draft.

Was it from some person in the police office?—Certainly.

From whom?—I cannot say, particularly.

But I ask you upon your belief?—I believe, it was from M'Donough, the second clerk.

Then to your recollection and belief, you received this copy or draft from M'Donough?—I believe so.

What did you do with it?—I kept it.

Where was it upon the last trial?—In my desk in the office.

And you had the second material by which you lately refreshed your memory, in your desk in the office?—I had, but prior to the

4th of November, I was obliged to leave town for Sligo, and did not return until the 14th; I came back in a bad state of health, not fit for any business.

Did you look for this paper on the 14th?—I did not.

Did you at any time before the trial, read the informations?—I did; I read them once before the trial.

Did you read your notes?—I did not look for them previous to the trial, but met them by accident: on the second day of the trial, which was the 22nd of November, I found them.

Did you read them after the 14th of November?—I do not recollect that I saw them from the 14th to the time of the trial.

You do not mean to say that seeing and reading them are not different? you might have seen them, though you did not read them: I ask you, whether you read them from the 5th to the 21st of November?—I think not.

Upon what day did you swear your informations?—I do not recollect.

Was it in the month of November or October?—I do not recollect.

Can you not say in what month it was?—If you were engaged in so active a life as I am, you would not be able to answer these things.

What, can not you say in what month it was?—I should suppose it was in August, September, or November.

Can you not mention which?—I cannot say positively.

From the time when you swore your informations, to the time of the last trial, did you see your notes?—I did.

Did you read them?—I did; I think I read them twice.

How long before the last trial was that?—It was so long that I cannot now swear to it exactly.

How long do you believe it was, was it three months or a month?—I think I did not read them from the fifteenth of November: I believe I did not.

Did you read them on the 4th?—I think not.

Did you on the second or the first?—I cannot upon my oath say upon what particular day I read them.

Can you form a belief upon what day you read them?—I cannot.

Was it a month, or two months after you swore the examinations, that you read the notes?—I cannot speak upon my recollection as to the time.

I do not ask you as to the particular time, but whether it was in a month or two after?—I can take upon myself to say I read them twice, but what the particular time was I cannot say.

For what purpose did you read them?—They came into my hands by accident; and I read them.

Then you read them twice by accident?—

No; I got them by accident, and I read them. For what purpose did you read them?—I had a right to read them.

But for what purpose did you read them?—Why, then, on my oath, I cannot say for what purpose I read them more than any other paper which might come into my hands.

You had no expectation at the time, of coming to court? Did you read it at all to refresh your memory on the last trial?—Certainly not; I read the information, but not the notes.

Did you look for your notes before the last trial?—I did.

At what time?—After I came to town on the 14th of November.

Did you look for them in the desk?—I did.

Did you then find them?—I did not, although they were in the desk at the time.

You attended at Liffey-street, in company with M'Donogh?—I did.

Was not the object of the meeting, for the purpose of preparing a petition?—I understood so.

Do not you believe that they really did intend to prepare a petition to parliament?—Their resolution said so.

Do you not believe that resolution?—I do.

Repeat the second resolution again?—That five persons be elected to represent the Roman Catholic inhabitants, to prepare a petition, and transact other business of the Roman Catholic inhabitants in the general committee.

Upon finding your notes, the day after you were examined on the last trial, you read them?—I did.

At the meeting which you mentioned, was there any other business transacted but that of preparing a petition?—There was, the election of the five persons and passing the resolutions.

Was there any other business transacted than what you mentioned?—Nothing else, but what I have stated in my direct evidence.

Let me ask you, did you swear any informations against Dr. Breene?—Dr. Breene was included in the informations, as I heard his name mentioned along with six others.

Upon your informations was there not a warrant issued against Dr. Breene?—There was.

And he was taken up?—Yes.

And he was in confinement for some time?—He was arrested; but I cannot say how long he was in confinement.

Would you let him off?—No.

How long was he in custody?—Only while he was waiting for his friends.

How long was that?—About half an hour.

Did you go with him from the police office?—No.

Then he was in custody in the office, and was afterwards sent to the chief justice, and you are one of the persons who swore informations against him?—Yes.

Mr. Barne.—My lords, we have a right to call for his informations, to inspect them; and examine the witness from them.

**Mr. Attorney General.**—My lords, I agree that, upon any suggestion to the Court, they will look into the informations, for any purpose that may be necessary; but to give them to the counsel for the defendant is altogether unusual.

**Mr. Justice Osborne.**—It might be attended with very serious consequences.

**Mr. Burne.**—My lords, I have an authority to show that I am entitled to see the informations.

**Mr. Justice Osborne.**—The Court will give the defendant every advantage of a variance between the informations sworn by a witness and his evidence upon the trial; and will watch it with scrupulous anxiety; that is the course which I have always observed.

**Mr. Justice Day.**—In the case of misdemeanors, the informations are equally under the direction of the Court; but they have been granted to counsel, for the purposes now required.

**Mr. Burne.**—The prosecution against Dr. Breene is abandoned, and refusing the informations to those who are concerned for him is very hard. But I rely upon the authority of a very remarkable case, which was even a capital case, where the informations were read at the prisoner's desire, in order to take off the credit of the witness. It was lord Stafford's case, in 2 State Trials,\* where the informations before a justice of the peace were read, for the purpose of showing a variance between them and the testimony of the witness.

**Mr. Joy.**—That case does not say that the prisoner has a right to have the informations read. They may be read if the Court think proper.

**Mr. Justice Osborne.**—I think that the counsel for the traverser must be satisfied with the Court taking the informations, and seeing if there be any variance; and if there were any doubt with respect to that, the particular part of the informations might be read.

**Mr. Burne.**—But it is hard that Dr. Breene's counsel should be refused an inspection of the informations.

**Mr. Solicitor General.**—My lords, surely it is not as counsel for Dr. Breene that, in this case of Mr. Kirwan, they seek to have the informations inspected by them?

**Mr. Justice Osborne.**—It is a precedent which I shall be afraid of establishing; for then upon all the circuits it might prevail, and the counsel for the prisoner would insist upon it, as a right to see the informations.

**Mr. Justice Day.**—I think that the informations may be shown to the counsel, it being a case of misdemeanor.

**Mr. Burne.**—We understand the practice to be so in England.

**Mr. Justice Osborne.**—I never knew the practice to be so.

**Lord Chief Justice.**—Perhaps there may be no objection to read the informations.

**Mr. Attorney General.**—My lords, we must press the objection; it is against all precedent and practice; the evidence which is called for is the evidence of the crown, and is in the possession of the Court, which the Court may inspect; and if there be any thing different from the testimony of the witness, the Court will do, as in other cases, point out the variance to the jury.

**Mr. Justice Day.**—There is no mystery in transactions of this nature imposed upon the crown; for the informations should be taken in the presence of the prisoner.

**Mr. Attorney General.**—My lord, that is where, under the statute of Philip and Mary, the informations sworn before a magistrate are made evidence. But here the informations sworn by this witness are not offered in evidence.

**Mr. Burrows.**—A simple view of the case will reconcile this matter: while a prosecution is depending, the Court will not suffer the informations sworn on the part of the crown to be disclosed; upon the principle that such disclosure might render the prosecution abortive; but after the trial has been disposed of, and there is a complete end of the cause, and a witness should come in any other cause, and such a document be produced, what is the principle which can obstruct it. I admit that the cases are not precisely similar, and also that the informations sought to be read are not confined to Dr. Breene; but that other persons, not yet tried, are included in them. We do not wish, by any means, to read any part of the informations which relate to other persons.

**Mr. Justice Osborne.**—That was what I understood was proposed long since, and therefore I think the officer might read that part.

**Mr. Burne.**—We require to see the entire informations.

**Mr. Justice Day.**—I cannot help saying a few words upon this question. The practice invariably has been, as was stated by my brother Osborne; the informations which have been sworn are the instructions to those concerned for the crown, as to the evidence upon which they are to proceed; and when the witnesses are produced upon the trial, it is extremely right and proper, if any of them vary from their informations, to recur to these informations, and to point out the contradiction: but it is perfectly obvious that these informations may contain matter of a most important nature to the crown, which should

not be disclosed upon any account. And, therefore, an inspection of those informations ought not to be submitted to any party, where there is an objection for the crown. That part of the informations in which it is alleged the contradiction exists, may be read by the confidential officer of the court; but, without consent, the informations cannot be put into any other hands, save an officer of the court.

**Mr. Justice Osborne.**—If the person under accusation has a right to make the demand which is now contended for, the point of time at which he is to make it is material: he might demand it before trial; he might say it ought to be communicated to him to enable him to prepare for the mode of defending himself; and, if this were acceded to, the next application that would be made, might be, in some other cause, to have the informations published previous to trial.

**Mr. Justice Daly.**—It is suggested at the bar that, as counsel for Dr. Breene, they have a right to call for this document to be read; if they have such right on his part, they must obtain it by a special application to the Court, which cannot be entertained in this cause.

**Mr. Solicitor General.**—That is the *Angus in herbs*.

**Lord Chief Justice.**—I own I think that the suggestion being made, that the object of producing the informations is to contradict the witness in what he had sworn upon a former occasion against the same party, and relating to the same transaction, the informations ought to be read.

**Mr. Attorney General.**—My lords let the variance be suggested to the Court, and then your lordships will look into the informations, and see whether there be any such variance or not. If you see, that there is any such variance, the informations may be read; but if there be not, there is no reason for reading them.

**Mr. Barne.**—Did you swear, that you saw Dr. Breene upon that day?—I swore to his name being mentioned.

Did you swear positively that he was in the chapel on that day?—I did not.

You merely swore to his name being mentioned. Did you swear against him as you did against the others whom you have mentioned?—I did not know them personally before.

Then you swore against them upon their names being mentioned.—Yes.

**Mr. Justice Daly.**—What do you mean by the word *personally*?—My lord, that I was not acquainted with them.

Did you mean to say that you never saw them before?—No, my lord, but that their names were mentioned.

**Mr. Barne.**—Then, it was from their names being mentioned that you knew them. Did you know them by any other means?—No.

Since the last trial did you converse with any body relative to the evidence which you were to give this day, or as to what you gave on the former trial?—I did not.

Did you converse with any person about the evidence which you have given?—I do not recollect.

Did any person in the police office speak to you about it?—Not to my recollection.

Did you never speak to any person relative to the evidence which you gave on a former trial?—I do not recollect that I was ever spoken to about it.

Nor did you speak to any other?—No.

Did any other person speak to you about the evidence which you were to give upon this trial?—No.

Did no person speak to you relative to the evidence?—Relative? what do you mean? by way of pressing me?

No; but had you any conversation with any person, relative to, or touching the evidence which you were to give this day?—No.

Suppose your notes were out of the case, had you any conversation with any person?—The only conversation that I recollect, was on Sunday last.

With whom was that conversation?—With young Mr. Kemmis, to whom I had given the notes.

Had you no conversation with any other person?—I do not think I had.

Where is the copy of the informations which you had on Saturday?—I cannot say where it is.

You have it not?—I have not.

You read it on Saturday?—I did not.

Where did you leave it?—I gave it to the second clerk.

Do you mean M'Donogh?—I do.

At what time on Saturday did you give that document to M'Donogh?—I believe about 4 o'clock.

Who was present?—No one.

Did any one desire you to give it to him?—No person.

Had you any suspicion that it would be asked for this day?—Not at all.

Were you not examined for a long time, upon the last trial, about your notes? did you not think you would be examined again concerning them?—I did not.

How long were they in your possession before Saturday?—They were not out of my possession.

Then you had them in your possession for three months before the trial, and you did not give them out of your possession until three days ago. Is that M'Donogh to be examined here?—Yes.

Has he a copy of those informations?—He has.

Then each of you, the constable and the clerk have a copy of the informations?—Yes.

Do you not believe that M'Donogh had lost his notes?—I believe so.

Do you not believe that he had notes?—He had, but destroyed them.

When?—Before the last trial.

How long before do you believe he did destroy them?—I cannot say, but I believe he destroyed them after he swore his examinations.

Why do you believe he destroyed them?—Because I heard him say he destroyed them.

Where did you hear him say so?—In this court.

Did you hear him say so any where else?—No.

Did you not hear him say, that he had a copy of the informations?—I did.

And you had two documents in your possession on the late trial, and produced neither?—I had.

M'Donogh had his copy of the informations?—He had.

Why did you give up your copy to M'Donogh on Saturday last?—He asked me for it, when I was going out he desired me to leave a copy of the informations for him.

Did he say, that any person desired him to ask you for it?—He did not.

Did you ask for that copy since?—No.

What do you believe he wanted it for?—I cannot say, I believe it was by order of the chief clerk.

Who is he?—Mr. Crawford.

Was it by his order, that M'Donogh asked you for a copy of the informations?—I suppose so.

Did he ask you for the notes at the same time?—He did not.

Mr. Justice Osborne.—I have read the informations, and I do not see the least variance between what he has sworn in them, and what he has now sworn on the table.

Lord Chief Justice.—Upon the last trial, it was considered, that he swore more positively against Doctor Breene, and therefore he was examined by the Court. He explained himself, by saying, that he did not mean to swear positively against Doctor Breene, and upon looking into the informations, it appears, that it might bear an argument, whether he did swear positively or not.

Mr. Justice Osborne.—I will read the part of the informations of the witness, John Shepherd, relating to the evidence now given by him. Informant saith, that seven persons were named, Dr. Edward Sheridan naming one, that person named a second, and he named a third, and so on, until seven were nominated. Informant saith, he could not distinctly hear the names of all the seven that were nominated, but heard the names of some of them, viz. Mr. Scurlough, Mr. Cole, and Mr. John Breene. That said seven persons, as soon as they were nominated, retired for a short time, and returned in about 4 or 5 minutes."

John Shepherd, re-examined by Mr. Sergeant Moore.

The last trial was on the 21st of November; you were examined on that day?—Yes.

You had not your notes on that day?—I had not.

At that time you could not account for them; when did you get them?—Next morning.

Did you come here, on that morning, with them?—I did.

What did you do with them?—I gave them to young Mr. Kemmis.

Did you give them time enough to have been produced upon the second day of trial?—Yes.

Are these the notes to which you allude?—They are.

Mr. Burne.—My lord, I request to see them.

Mr. Sergeant Moore.—You are at liberty to inspect them.

Mr. Burne.—(to witness) When did you give these notes to Mr. W. Kemmis?—On the second day of trial.

Did you see them since?—Mr. W. Kemmis shewed them to me last Sunday.

What did he say?—He asked me did I remember the paper; I said, I did.

Then he had a doubt of your hand-writing?—He did not say so.

Are these notes exactly in the same state as when you gave them to Mr. W. Kemmis?—They are, with the exception of a memorandum which he has made upon them.

[Court adjourned.]

Note. After the Court had adjourned, and before all the judges had retired, it was stated, that the counsel for the traverser had possession of the notes of the witness (Shepherd), and were copying them; judge Osborne, who had not left court said, that they ought to be restored to the crown solicitor, and produced by him again when the Court sat in the morning.

Wednesday, 29th January, 1812.

Mr. Burton.—My lords, the notes of Shepherd, the witness, were produced at the close of his examination yesterday evening; they were put into the hands of Mr. Burrows at the time when the Court adjourned. He wished to take them home along with him, but was not permitted; however, they were to be produced this morning, but now I am not allowed to see them unless we give them in evidence.

Mr. Justice Osborne.—Have they been read in evidence?

Mr. Jay.—No, my lord, they have not.

Mr. Attorney General.—My lords, this is the consequence of yielding too much. A great deal was said last trial respecting the notes being lost: the witness has since found his notes, and they are now produced. He may be examined respecting them; but they

are the notes of the witness, and have not been made evidence.

**Mr. Joy.**—We consent, on the part of the crown, to have them read, and let them go to the jury.

**Lord Chief Justice.**—If both parties wish to give them in evidence, let them be read.

**Mr. Gould.**—My lord, have we not a right, to examine, whether these notes be of the witness's hand writing?

**Mr. Justice Osborne.**—These notes are the private property of the witness.

**Mr. Jebb.**—The witness may be kept upon the table, while the officer of the court reads the notes.

**Mr. Joy.**—Or we have no objection to let the witness retire, and come again if the notes be given in evidence to the jury; but we object to the notes being given into the possession of the counsel for the traverser, to enable them to make some other use of them.

**Lord Chief Justice.**—The witness may be called and the counsel for the traverser may interrogate him, as they think right. With regard to the notes, they ought to be produced, but no observations can be made upon them unless they are read in evidence.

**Mr. Burton.**—We may make observations upon their not being produced.

*James M'Donogh sworn.—Examined by  
Mr. Sergeant Ball.*

Do you hold any situation in Dublin?—I am a clerk in the head office of police.

**Lord Chief Justice.**—Do the counsel for the traverser desire any further examination of the last witness?

**Mr. Burton.**—Not now, my lord.

**Mr. Justice Osborne.**—What do you mean by saying now? It appears to me, that the notes are conceded to you. I think they should not be produced when another witness is examined. But the rest of the Court think otherwise.

**Lord Chief Justice.**—Let them be produced.

**Mr. Joy.**—My lords, we submit to this, if it ever was done before, to take the notes from an individual who is examined as a witness. Mr. Burrowes wanted to take a copy of these notes. Surely that cannot be permitted. If the counsel for the traverser consent to their being read, we submit: but otherwise they have no right to them.

**Mr. Burrowes.**—My lords, the witness did allege, that he corrected his memory by looking at memorandums, and he looked at some again here; that entitles us to cross-examine him respecting the paper, and we cannot do so without looking at it.

**Mr. Joy.**—My lords, we require a decision

upon the strict rule of law, and will be bound by it.

**Lord Chief Justice.**—I have no recollection of such a matter having occurred before. The witness certainly spoke of these notes.

**Mr. Joy.**—But, my lord, they were not given in evidence: they were mentioned by the witness, and they were produced to shew that they are in existence.

**Mr. Justice Daly.**—I think, that where the witness speaks from notes to refresh his memory, the opposite party may cross-examine him, to ascertain whether those notes were genuine or not.

**Mr. Justice Day.**—Cannot the counsel for the crown give the notes to the counsel for the traverser, to enable them to cross-examine the witness?

**Mr. Joy.**—Yes, my lord, to cross-examine the witness. We wish them to do that; and let the notes be read; but the counsel for the traverser want to have these notes, with a view to cross-examine another witness.

**Mr. Sergeant Moore.**—My lords, I think I may be privileged to say a word, having examined the witness respecting whom this discussion has arisen. With respect to these notes, the witness did not say a word on his direct testimony; but after his cross-examination, they were produced, because they were shouted for; they were seized upon by manual force, in the same spirit with which these trials have been conducted from the beginning, with an indelicacy not heretofore practised.

**Mr. Burrowes.**—My lords, I am sorry that the expression has escaped from the learned counsel. There can be no mistake as to the person to whom he has alluded; but I aver, that I did not lay violent hands upon the paper; and I also aver, that the learned gentleman did promise me that I should have a copy of it, and that he violated his engagement.

**Mr. Sergeant Moore.**—When the paper was taken from me by manual force, I was obliged to get it back by stratagem.

**Mr. Justice Osborne.**—The matter should be considered this day, exactly as if an adjournment had not taken place yesterday. At that time the informations were in the hands of Mr. Burrowes; it was objected that he had not a right to take a copy of them. I thought he was not entitled to a copy of them. But I think, they should now be left in his hands again; and if he thinks proper, he may cross-examine the witness.

**Mr. Attorney General.**—We will make no objection to that course of proceeding; but they have no right to cross-examine the witness now produced, from informations sworn by another person.

[Here the witness James M'Donogh, was desired to withdraw, and John Shepherd was called.]

**Mr. Burton.**—My lords, I am very sorry, that any altercation should have occurred upon this subject. I have no wish to conceal what my object was. It will fall to my lot to ask M'Donogh some questions, and I wanted these notes for the purpose. It is said they are not his notes; but still, I have a right to cross-examine from them, and afterwards to ask Shepherd a question or two. I think that is my right. It is now proposed to call Shepherd again; and if we cross-examine him further, we may have the notes. I do not say, that we will do so; but I want the notes, in order to cross-examine M'Donogh.

**Lord Chief Justice.**—From the manner in which the notes were produced on the table, I thought that counsel for the adversary had a right to look at them, and to cross-examine the witness, whose notes they were: but unless they are given in evidence, the adversary has not a right to a copy of them; neither has he a right to the possession of them, for any other purpose, than that of cross-examining the witness whose notes they were.

**Mr. Burton.**—My lords, suppose Shepherd remained in Court: could we not cross-examine any other witness, as to what Shepherd said?

**Mr. Justice Day.**—So you may; but I do not think that you have any right to the possession of the notes for that purpose.

**Lord Chief Justice.**—If you wish to read the notes in evidence, there is an end of all objection; and you may then make whatever use of them you think proper.

**James M'Donogh sworn.**—Examined by **Mr. Sergeant Ball.**

You have stated, that you are a clerk in the police-office?—Yes.

Were you examined upon the trial of Doctor Sheridan?—I was.

Do you know the Roman Catholic chapel in Liffey-street?—I do.

Were you there in the month of July last?—I was.

Upon what day?—On Wednesday, the 31st of July.

At what time of the day did you go there?—Between twelve and one.

Were you accompanied by another person?—I was.

Who accompanied you?—John Shepherd.

Do you mean the witness who was examined here?—Yes.

Was there any assemblage of persons in the chapel?—There was a considerable number.

Did you remain there?—I did.

Did you stay in the body of the chapel, or did you retire to any particular part?—I went to the gallery.

Could you observe from the gallery what proceedings took place?—Yes.

What proceedings took place? was any person in the chair?—Yes, Dr. Sheridan.

Did he take the chair after you went there, or was he in the chair when you arrived?—He was in the chair when I went in.

Did you observe any person address the chair, or the meeting, upon that occasion?—Yes.

Who did so?—Mr. Thomas Kirwan.

Do you know that gentleman by sight?—Yes.

Is he in Court?—Yes; there he is.

What was the subject of his address to the chair?—He proposed that a petition should be presented to his royal highness the prince Regent, and both Houses of Parliament, praying for a removal of the penal laws existing against the Roman Catholics of Ireland.

What was the fate of the motion?—It was seconded, and carried unanimously.

Was the question put upon it whether it should be passed or not?—I saw no objection made to it.

Was there any other motion made?—There was.

By whom?—By Mr. Kirwan.

What was the second motion?—He moved, that five persons be appointed to present the said petition, and that said five persons should also represent the Catholics of that parish in the general committee of the Catholics.

Was that motion seconded?—It was.

Was the question put upon it?—I do not recollect the putting of the question; but it was moved by Mr. Kirwan, seconded by some other person, and carried unanimously.

Was there any other motion made?—There was.

By whom?—Mr. Kirwan.

What was it?—He proposed, that seven persons, then present, should be appointed to elect the five members of the committee; but that none of the seven were to be eligible to be of the committee.

Was that resolution seconded?—It was.

And carried?—Yes.

Were there seven persons nominated, pursuant to the resolution?—There were.

In what manner did the nomination take place?—By Doctor Sheridan naming the first, that person named a second, the second named a third, and so on until the seven were named.

Were those seven persons present?—I believe they were.

What was done after those seven were nominated?—They retired for a short time.

Did they go out of the chapel?—I cannot say.

How long was it before they retired?—It was about ten minutes.

When they came back, what was next done in the assembly?—They proceeded to mention the names of the five persons, whom they had elected.

Were those names publicly mentioned?—Yes, they were.

Do you remember the names?—I do; they began with Doctor Sheridan; the next was Thomas Kirwan, the next was Henry Edmond

Taafe, William Sweetman, and Richard Shail.

What was next done after these names were mentioned?—When they named Dr. Sheridan as one of the committee of five, it was moved that he should leave the chair.

Was any person to take his place?—It was moved that Dr. Burke should take it.

Was that done?—It was.

What was next done?—Dr. Sheridan's name was put by the chairman, Dr. Burke, to the vote of the meeting. Was Mr. Kirwan's name put, that he should be one of the committee of five?—It was.

Did he decline to be one of the committee, or how did he conduct himself?—When his name was voted, he returned thanks, and said he would discharge the duty of the trust reposed in him, or something to that effect.

Did Dr. Sheridan afterwards resume the chair?—Yes; after he was appointed, it was moved that Dr. Burke should leave the chair, and that Dr. Sheridan should take it again, which was done.

*Lord Chief Justice.*—Do you mean, that after the vote upon Dr. Sheridan's nomination was carried he took the chair again?—Yes, my lord.

Mr. Sergeant *Ball.*—Did Dr. Sheridan quit the chair again, before the meeting was dissolved?—He did.

For what purpose?—It was moved, that he should leave the chair, and that Henry Edmond Taafe should take it; and the thanks of the meeting were then returned to Dr. Sheridan for his proper conduct in the chair.

Did you, during that day, hear any thing mentioned in the assembly relative to a proclamation which had issued?—Yes; I recollect, early in the business of the meeting, there was some person about to move some matter; and another of the assembly interrupted him, and begged it might be withdrawn, as it would retard the business of the day; and asked whether he had heard of a proclamation which had issued.

Was the motion made, or was it withdrawn?—It was withdrawn.

Did Shepherd stay with you while you continued in the chapel?—Yes.

Mr. Justice *Day.*—When Dr. Sheridan resumed the chair, did he put the question upon Mr. Kirwan?—He did.

And upon the rest?—Yes, he put the question upon four names.

*James M'Donogh* cross-examined by  
Mr. *Burton.*

You were examined upon the last trial?—Yes.

And so was your friend Shepherd?—Yes.

And Mr. Huddleston?—Yes.

These were the only witnesses who were examined on behalf of the crown?—That is all I believe.

You do not pretend to have a recollection of the precise exact words; you only give

the substance of them, as you recollect?—Yes.

You do not give the precise words?—What words do you mean?

Do you take upon you to say, that you state the very precise words which were uttered?—No.

You mentioned at the close of your statement, "to that or the like effect."—If you ask me as to any exact words, I will say whether they were uttered or not.

Upon the last trial, you did not pretend to say that you could tell every word; can you tell now every word?—I do not recollect every word that was used.

I suppose you to be a very fair man, and you appeared so upon the last trial; you were employed to take notes of what passed?—Yes.

Who was your commanding officer; was it major Sirr?—No.

Was it not he that sent you?—It was not.

You did not recollect upon the last trial?—I could not say which of the magistrates sent me.

Can you say now?—I can; I have learned since, that it was in consequence of a message I received from Mr. Farrell, the chief constable, that it was the desire of the magistrates I should go there.

You were mistaken then upon the last trial?—I believe not.

You said you had orders from one or other of the magistrates, major Sirr or Mr. Hare?—It was in consequence of an order from one of them.

You cannot tell which of them?—I cannot.

You thought it was one of them?—I did.

You have learned since otherwise?—I have.

When did you see Shepherd's notes last?—The last time I saw them was on Sunday last.

Who showed them to you?—I saw them in Mr. Kemmis's house in Kildare-street.

Who showed them to you?—Young Mr. Kemmis.

You read them?—I looked over them; I do not know that I read the entire of them.

Why did he show them to you?—He asked me, did I know them.

Do you know Shepherd's hand-writing?—I do.

Did he ask you whether they were in Shepherd's hand-writing?—He asked me, whether these were the notes which Shepherd took.

And you read them from beginning to end?—I did not.

Why did you stop?—I can't tell.

Did Mr. Kemmis hurry you?—No.

Did he desire you not to read them?—No.

Did you read a dozen lines?—I did not reckon them.

Did you read six?—I can't say.

Or more than six?—I can't say.



Or fifty lines?—I do not know that there were fifty in it.

Can you say that you read to the amount of fifty lines?—I cannot.

You were sent to the chapel for the very purpose of taking notes?—Yes.

Was Shepherd sent for the same purpose?—Yes, I believe he was.

Do you not know it? Have you any doubt?—I was not present when he was directed.

How did it happen that you went together?—He was one of the persons appointed to go, and I cannot say whether he called upon me, or I upon him.

At what hour of the day did you go?—Between twelve and one.

You took pen and ink with you?—No.

Did he?—Not that I know of.

You were content with a pencil?—I was.

You went for the purpose and with a view of swearing informations?—No I did not.

Was it not for that purpose?—I did not know that I was to swear any informations.

Did it not enter into your mind that you would be called upon?—It did not.

So you were sent with a constable, and you are a clerk, and it did not enter into your head, that you were to swear informations?—No.

Nor to give evidence?—No, I was to give an account of what passed.

And to make a report?—Yes.

What part of the chapel did you go to?—Into the bottom of the chapel.

Were there many?—Not a great many at first.

About how many?—About one hundred.

To what part did you go, to take your notes?—To the gallery.

How near the chairman?—Nearly opposite to him.

You understood what the meaning of taking notes was; did you ever take any before?—No, I do not recollect that I did.

Of course, as soon as the business began, you took out your paper and pencil, and wrote what passed?—Yes.

And Shepherd stood by you, and did the same?—Yes.

Of course you followed the speakers, as exactly as you could, and wrote down exactly what they said?—Yes, as nearly as I could.

And Shepherd did the same?—I imagine so.

Did you not see his notes?—I did.

You compared your notes?—I do not recollect that I compared mine with his.

But you saw his afterwards?—I did.

Did you take them exactly as he did?—I cannot say that.

You followed the speakers as he did?—Yes.

Mr. Justice Day.—Did you exchange notes?—No my lord.

Mr. Burton.—You both followed the speakers as nearly as you could?—We did, I believe.

And you never altered those notes afterwards?—No, but to put them in writing.

You did that afterwards?—Yes, I took them down with the pencil, and wrote them afterwards.

Lord Chief Justice.—Do you mean with pen and ink?—Yes, my lord.

Mr. Burton.—So then you copied your notes; where did you do that?—In a house in the neighbourhood of the office.

And Shepherd did the same?—Yes.

Then you compared notes?—No; I did not copy the whole of mine at that time.

But you finished them afterwards?—Yes.

But you swore you made no alterations in them?—I did not.

Did Shepherd make no alterations in his?—I do not know that he did.

You saw them, and they agreed with yours?—I believe they did.

Did you ever see Mr. Kirwan before that day?—Not to my knowledge.

You had never seen Dr. Breene before that day?—I did.

You have seen him?—I saw him several times.

Then you knew him at that time?—I did not see him in the chapel.

You swore against him?—I stated, that I heard his name mentioned as one of the seven persons who were nominated. As I came out of the chapel in the yard going home, I turned round, and thought I saw him in the crowd; from which circumstance, I believe he was in the chapel: I mentioned it at the same time to Shepherd.

Did you contrive to swear, in your informations, that Dr. Breene was one of the seven persons who retired?—I did.

You were mistaken in that?—I believe he was there; but did not see him in the chapel.

You believed he was one of the seven who retired?—There were some of them whom I did not see.

Did you not swear they retired?—I believed they did.

You sat opposite the chairman, and took down every word that passed, as nearly as you could?—Yes.

You afterwards made a copy of what you had so taken down?—Yes, of part.

Did you ever copy the whole?—I do not say I copied; I had copied part of the notes in writing, and the particulars of the rest were put into the informations when they were drawn.

Did you copy them before?—No, not all of them.

Did you copy the whole of what was taken down in the chapel into the informations?—Yes.

From your pencil notes?—Yes, from the pencil notes, and from memory.

Did you copy the whole of the pencil notes?—I believe I did.

Did you, in the informations, change the order in which the matter stood in your notes?

Mr. Joy.—Do you ask him whether he transposed the order of the proceedings.

Mr. Burton.—Do you understand the meaning of the word "transpose?"—I do not.

Do you understand the word "represent?"—Yes.

Did you put all the matter which was in your pencil notes, into the informations?—I did.

Did you put in more?—I think not.

Then you were not assisted by your memory?—I cannot say that.

I knew you meant to say what was right; you saw Shepherd's notes?—I did.

Did you see them more than once?—I saw them the day he was swearing his informations.

Was that the first time?—No; I saw them the day he copied them.

And when he made his informations?—Yes.

And you saw them last Sunday?—Yes.

You do not mean to say that they agreed word for word with yours?—I cannot.

But that they agreed in substance?—I believe so.

And followed the speakers in the same order, and what they said?—Yes.

You forgot yourself upon the last trial, when you said you made no copy of the notes?—I did not say so.

Then this account must be incorrect?—I dare say it is.

Do you write short-hand?—No.

Will you say this account is erroneous?—I cannot say.

Did you ever make any abstract from, or copy of the notes?—I made a copy of part of them.

Do you recollect what you said yourself, that you did not take a copy or abstract, until you swore your informations?—I do not recollect.

But if you did say so, it was not the truth?—It may have been.

Must it not have been?—I cannot say.

One or other is true; either you took a copy, or did not?—I copied part.

That is true?—Yes.

Then you did not say, that you did not copy them?—I do not recollect.

You are a very cautious man; and have said fairly, that you have not pretended to state the very precise words which were used, but that you have stated the substance?—Yes.

The first resolution which you have stated, was, that a petition be presented to his royal highness the Prince Regent, and both houses of parliament, praying a repeal of the penal laws?—Yes.

Did it not come into your head, then, that you might be called upon to swear informations?—No, it did not.

Did you not think it a bad business?—No.

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You did not think it either good or bad?—No.

And you took down, as exactly as you could, what the resolution was?—I did.

And also the second resolution?—Yes.

Let me hear it again?—"That five persons be appointed to present the said petition, and to represent the Catholics of that parish, in the general committee of the Catholics."

When did you last see your notes, either those which were in pencil, or those which were written?—I do not recollect.

When did you see your informations?—I saw them on Saturday last.

Who shewed them to you?—I had them myself.

That is, you had a draft of them?—Yes.

You kept that draft?—I did.

You had seen the informations shortly before the last trial?—Some short time before.

And you knew very well, what you had stated in them?—I do.

Do you swear positively?—Yes, positively.

Did that positive knowledge come to you in your sleep, or from the information of any other person since the last trial?—I saw nothing since the last trial, but the informations.

You saw them very shortly before the last trial?—Yes, some short time.

You have taken your notes down as nearly as you could, from the mouths of the speakers at the time; you also made a copy or abstract, and you forget now that you could not say whether the word "represent" was used or not?—I could not say positively at that time.

Now, sir, have you ever talked with any person upon the subject of what you said upon the last trial, between that time and this?—Not that I recollect.

Did you not speak to any human being?—Only to Mr. Kemmis, on Sunday last.

Why I thought that the only conversation you had with him was, his inquiring of you whether the notes were Shepherd's?—No, I did not tell you that was all the conversation.

Then you had a conversation with him on the subject of the evidence?—He asked me to repeat part of what I had heard.

Do you mean that he asked you to repeat part of your informations, or part of what had passed in the chapel?—What passed in the chapel.

Did not that refresh your memory?—No, nor did I receive instructions from any body.

Have you had conversations with any other person on the subject?—No.

You understand the meaning of the word "represent"?—I do.

Did it not make a strong impression on your mind when you heard it used?—I cannot say it made a strong impression.

You did not recollect it upon the last trial?—I did not; I mentioned it; but was not positive.

3 I

Now you are positive?—I am.

You recollect, upon the last trial you said, that the word was "represent," or "present," or something to that effect?—No, I do not recollect what I said.

Do you recollect every thing you have said?—I do not say that I recollect every thing.

Upon your oath do you say that you heard a resolution put from the chair, containing the word "represent"?—put from the chair? It was stated by Mr. Kirwan.

Do you know the difference between moving a resolution, and putting it from the chair?—Yes.

Who moved the resolution?—Mr. Kirwan.

Who put it from the chair?—Dr. Sheridan.

Are you positive?—I am.

You said just now, you did not recollect that?—I did not tell you so.

You told Mr. Sergeant Ball, that you did not recollect who put the motion from the chair?—I do not recollect that I did.

By virtue of your oath (and recollect yourself upon it, you are mending and altering the evidence which you gave upon the last occasion) will you now swear, that Mr. Kirwan did move a resolution with the word "represent" in it, and that Dr. Sheridan put a resolution to the meeting with that word in it?—I believe he did.

You stated that a motion was made or proposed, and afterwards withdrawn, and that something was said of a proclamation?—I did.

Have you a precise recollection of the words of the resolution?—There was no motion made; there was some person about to move a motion, and another person interrupted him.

Were no words of that resolution mentioned?—Not that I recollect.

Not recollect?—I do not believe there was. If any words were used, you would have taken them down?—I am not sure.

You said a motion was made; I want to know what it was?—A person was about to make a motion.

Did you not say five minutes ago, that a motion was actually made?—I did not say actually.

Then I mistook you, but it was made?—I did not say so.

The jury have heard you; did you not say, that a motion was made?—It was about to be made, and not made; it was prevented.

Did you not say that you took down the substance of what was said from the beginning to the last, and do you forget whether you took that down or not?—I do not recollect.

You are in a state of uncertainty whether a motion, consisting of a great number of words was made or not?—A motion was about to be made, and was not permitted.

The motion was not put from the chair; but was the speaker stopped?—He only said a word or two.

What were they?—I cannot say.

Shepherd took notes, and completed his copy?—I believe so.

Then, if such a motion was put, it is probable it would appear in Shepherd's notes?—I do not know, I cannot account for that.

You took down every thing; Shepherd did the same; do you think it probable, that if such a thing took place, it would appear in Shepherd's notes?—It is probable.

Let us see all the different ways which you had of refreshing your memory between the last trial and this. You had sworn informations; you had read them shortly before the trial, and you read your notes ten days before the trial?—I do not say so.

But you had copied your notes, and read them?—Part of them, I did not say I read them.

Did you not read them when you were copying them?—So far as I copied.

Did you read Mr. Ridgeway's report of the last trial?—No.

Did you read any other report of it?—I might have seen a report in the newspapers.

Tell me another thing; you acknowledge you took your notes as precisely in the form as they occurred, but did you not read them before the last trial?—No.

Are you sure of that?—I am.

But you saw them ten days before the trial?—I said so.

You did not read them?—No.

Nor Shepherd's notes?—I saw them on Sunday last.

Was it to refresh your memory, that you took your notes out of your desk?—I did not take them out of my desk.

Other reporters may mistake, as well as you?—They may.

You followed the speakers as accurately as you could?—Yes.

And you meant them as a kind of statement of the matters which took place?—Yes.

You saw Shepherd's notes, and they were taken in the same way?—I believe so.

Were not Shepherd's notes as they were copied, or transcribed, in the form of a history or statement of what had passed; that is, that upon such an occasion such a motion was made? You did not make any preface to the report; you would have lost time if you did; you only took down the words and transcribed them; Shepherd gave you a draft of his informations on last Sunday?—No, not on Sunday.

Mr. Burton.—Will the gentlemen on the other side permit me to see Shepherd's notes.

[Answered in the negative.]

Shepherd shewed you his notes on Saturday?—Yes.

For what purpose?—In consequence of a letter from the chief clerk, I applied to Shepherd for them; the magistrates wanted them, and I left them upon the table.

Could not Shepherd have done that himself?—The order was given to me, and I got them.

You did not read them?—I did not.

**Mr. Justice Day.**—You say now positively, that the word “represent” was used; you were not positive upon the last trial?—No, my lord.

Why are you more positive now, than you were before?—Because I have read the informations later before this trial, than I did upon the former.

**Mr. Attorney General.**—My lords, we do not intend to produce any more witnesses on behalf of the crown; but there is a document now to be produced, and which was not given in evidence upon the last trial, because it was understood, that it was rather a question of law which was contested, than any doubt of the fact. It appears by the evidence, that a motion was about to be made in the meeting at Lifsey-street, and that it was stopped upon a suggestion that the proclamation had issued. We will now show the fact, that a proclamation did issue, by producing the gazette; not for the purpose of reading it as evidence of the contents; but to show that a proclamation did issue, inhibiting such elections as these.

**Mr. Burrows.**—My lords, we admit that such a proclamation had issued.

**Mr. Attorney General.**—My lords, that is perfectly fair; I did not mean to offer the gazette as evidence of the contents of the proclamation.

**Mr. Burrows.**—My lords, I understand, that in fact the proclamation did not issue until late in the evening of the 31st of July; but it was mentioned at the meeting, that there was to be such a proclamation, and that was the same in effect.

[Cann closed on behalf of the crown.]

**Mr. Burrows.**—My lords, before I enter upon this very important subject, I shall take the liberty of submitting what strikes my judgment, in point of law, to be a decided and fatal variance between the evidence and the indictment upon which the traverser is put upon his trial; and such as, I protest, I feel the utmost anxiety to succeed upon, in order that the public mind may have a respite from the agonizing feelings by which it has been tortured.

**Lord Chief Justice.**—It may be right to mention what was an irregularity that took place upon the former trial, and which the Court were reduced to, by the consent of the parties; that was, hearing two counsel for the defendant. The ordinary course is, to hear but one counsel; and the Court is not disposed to yield that, as a matter of right, which, upon the last occasion, was granted as an indulgence.

**Mr. Attorney General.**—My lords, we agreed upon the last occasion, because matter of law was insisted upon.

**Mr. Justice Osborne.**—It is mentioned now, at Mr. Burrows may go into the merits.

**Mr. Burrows.**—But, my lord, I have a previous objection, which, if I succeed in it, will render it unnecessary to go farther. I am going to mention a matter, not controverting at present any thing which has been heretofore laid down upon the construction of the convention act, but conceding, that it bears upon every species of delegation whatever, and that it should obtain the precise construction which has been contended for by the counsel for the crown, and I will satisfy the Court, that there is a decided variance between the case attempted to be proved, and the case which is spread upon the record. I shall read the act, for the purpose of establishing this position, that in an indictment under this act, it is indispensably necessary, to designate the particular district or place, for which the electors are arraigned for violating the law; and if not designated, the indictment will be bad.

A district has been designated in this indictment, and the evidence has applied to a distinct district; the designation of the district containing the electors who proceed to elect delegates, is not for the sake of a *venue*; but is a distinct portion of the *corpus delicti*: the venue is the place where the illegal deputation has been transacted, and an illegal deputation might be made in Dublin to represent the people of Cork, and yet the district of Cork would be named, not for a *venue*, but for a complete and legal description of the crime. To show that I am warranted in this, it will be necessary to call your lordships' attention to the convention act:—the recital is unnecessary to this particular topic, but it enacts that “all assemblies, committees, or other bodies of persons elected, or in any other manner constituted, or appointed to represent, or assuming, or exercising a right, or authority to represent the people in this realm, or any number, or description of the people of the same, or the people of any province, county, city, town, or other district within the same, &c.” And the second section enacts, “That if any person shall give, or publish, notice of election to be holden of any person to be representative, or delegate, &c. of the inhabitants of any province, county, city, town, or other district within this kingdom,” &c. I think that the reading of these sections establishes my proposition, that a district is essentially necessary, as a material part of the description of the crime; and I will satisfy your lordship by analogy which is irresistible; if an action be brought for the false return of a district, for which the election is confessedly legal, it is essential to state the particular county, town, or district, in which the election was held; and if the evidence varies from the statement, it will be fatal:—for where a place is mentioned, not by way of *venue*, but as a part of the crime, and the evidence does not correspond with that description, however the crime may be supposed to be proved against the party, it is not *secundum allegata et probata*. So in an action for bribery

**Mr. Attorney General.**—My lords, I agree that, upon any suggestion to the Court, they will look into the informations, for any purpose that may be necessary; but to give them to the counsel for the defendant is altogether unusual.

**Mr. Justice Osborne.**—It might be attended with very serious consequences.

**Mr. Burne.**—My lords, I have an authority to show that I am entitled to see the informations.

**Mr. Justice Osborne.**—The Court will give the defendant every advantage of a variance between the informations sworn by a witness and his evidence upon the trial; and will watch it with scrupulous anxiety; that is the course which I have always observed.

**Mr. Justice Day.**—In the case of misdemeanors, the informations are equally under the direction of the Court; but they have been granted to counsel, for the purposes now required.

**Mr. Burne.**—The prosecution against Dr. Breene is abandoned, and refusing the informations to those who are concerned for him is very hard. But I rely upon the authority of a very remarkable case, which was even a capital case, where the informations were read at the prisoner's desire, in order to take off the credit of the witness. It was lord Stafford's case, in 2 State Trials,\* where the informations before a justice of the peace were read, for the purpose of showing a variance between them and the testimony of the witness.

**Mr. Jay.**—That case does not say that the prisoner has a right to have the informations read. They may be read if the Court think proper.

**Mr. Justice Osborne.**—I think that the counsel for the traverser must be satisfied with the Court taking the informations, and seeing if there be any variance; and if there were any doubt with respect to that, the particular part of the informations might be read.

**Mr. Burne.**—But it is hard that Dr. Breene's counsel should be refused an inspection of the informations.

**Mr. Solicitor General.**—My lords, surely it is not as counsel for Dr. Breene that, in this case of *Mr. Kirwan*, they seek to have the informations inspected by them?

**Mr. Justice Osborne.**—It is a precedent which I shall be afraid of establishing; for then upon all the circuits it might prevail, and the counsel for the prisoner would insist upon it, as a right to see the informations.

**Mr. Justice Day.**—I think that the informations may be shown to the counsel, it being a case of misdemeanor.

**Mr. Burne.**—We understand the practice to be so in England.

**Mr. Justice Osborne.**—I never knew the practice to be so.

**Lord Chief Justice.**—Perhaps there may be no objection to read the informations.

**Mr. Attorney General.**—My lords, we must press the objection; it is against all precedent and practice; the evidence which is called for is the evidence of the crown, and is in the possession of the Court, which the Court may inspect; and if there be any thing different from the testimony of the witness, the Court will do, as in other cases, point out the variance to the jury.

**Mr. Justice Day.**—There is no mystery in transactions of this nature imposed upon the crown; for the informations should be taken in the presence of the prisoner.

**Mr. Attorney General.**—My lord, that is where, under the statute of Philip and Mary, the informations sworn before a magistrate are made evidence. But here the informations sworn by this witness are not offered in evidence.

**Mr. Burrows.**—A simple view of the case will reconcile this matter: while a prosecution is depending, the Court will not suffer the informations sworn on the part of the crown to be disclosed; upon the principle that such disclosure might render the prosecution abortive; but after the trial has been disposed of, and there is a complete end of the cause, and a witness should come in any other cause, and such a document be produced, what is the principle which can obstruct it. I admit that the cases are not precisely similar, and also that the informations sought to be read are not confined to Dr. Breene; but that other persons, not yet tried, are included in them. We do not wish, by any means, to read any part of the informations which relate to other persons.

**Mr. Justice Osborne.**—That was what I understood was proposed long since, and therefore I think the officer might read that part.

**Mr. Burne.**—We require to see the entire informations.

**Mr. Justice Day.**—I cannot help saying a few words upon this question. The practice invariably has been, as was stated by my brother Osborne; the informations which have been sworn are the instructions to the witnesses for the crown, as to the evidence upon which they are to proceed; and when the witnesses are produced upon the table, it is extremely right and proper, if any of them vary from their informations, to recur to those informations, and to point out the contradiction: but it is perfectly obvious that those informations may contain matter of a most important nature to the crown, which should

\* 7 Howell's State Trials, 1293.

not be disclosed upon any account. And, therefore, an inspection of those informations ought not to be submitted to any party, where there is an objection for the crown. That part of the informations in which it is alleged the contradiction exists, may be read by the confidential officer of the court; but, without consent, the informations cannot be put into any other hands, save an officer of the court.

**Mr. Justice Osborne.**—If the person under accusation has a right to make the demand which is now contended for, the point of time at which he is to make it is material: he might demand it before trial; he might say it ought to be communicated to him to enable him to prepare for the mode of defending himself; and, if this were acceded to, the next application that would be made, might be, in some other cause, to have the informations published previous to trial.

**Mr. Justice Daly.**—It is suggested at the bar that, as counsel for Dr. Breene, they have a right to call for this document to be read; if they have such right on his part, they must obtain it by a special application to the Court, which cannot be entertained in this cause.

**Mr. Solicitor General.**—That is the *Angus in Acta*.

**Lord Chief Justice.**—I own I think that the suggestion being made, that the object of producing the informations is to contradict the witness in what he had sworn upon a former occasion against the same party, and relating to the same transaction, the informations ought to be read.

**Mr. Attorney General.**—My lords let the variance be suggested to the Court, and then your lordships will look into the informations, and see whether there be any such variance or not. If you see, that there is any such variance, the informations may be read; but if there be not, there is no reason for reading them.

**Mr. Burke.**—Did you swear, that you saw Dr. Breene upon that day?—I swore to his name being mentioned.

Did you swear positively that he was in the chapel on that day?—I did not.

You merely swore to his name being mentioned. Did you swear against him as you did against the others whom you have mentioned?—I did not know them personally before.

Then you swore against them upon their names being mentioned.—Yes.

**Mr. Justice Daly.**—What do you mean by the word *personally*?—My lord, that I was not acquainted with them.

Did you mean to say that you never saw them before?—No, my lord, but that their names were mentioned.

**Mr. Burke.**—Then, it was from their names being mentioned that you knew them. Did you know them by any other means?—No.

Since the last trial did you converse with any body relative to the evidence which you were to give this day, or as to what you gave on the former trial?—I did not.

Did you converse with any person about the evidence which you have given?—I do not recollect.

Did any person in the police office speak to you about it?—Not to my recollection.

Did you never speak to any person relative to the evidence which you gave on a former trial?—I do not recollect that I was ever spoken to about it.

Nor did you speak to any other?—No.

Did any other person speak to you about the evidence which you were to give upon this trial?—No.

Did no person speak to you relative to the evidence?—Relative? what do you mean? by way of pressing me?

No; but had you any conversation with any person, relative to, or touching the evidence which you were to give this day?—No.

Suppose your notes were out of the case, had you any conversation with any person?—The only conversation that I recollect, was on Sunday last.

With whom was that conversation?—With young Mr. Kemmis, to whom I had given the notes.

Had you no conversation with any other person?—I do not think I had.

Where is the copy of the informations which you had on Saturday?—I cannot say where it is.

You have it not?—I have not.

You read it on Saturday?—I did not.

Where did you leave it?—I gave it to the second clerk.

Do you mean M'Donogh?—I do.

At what time on Saturday did you give that document to M'Donogh?—I believe about 4 o'clock.

Who was present?—No one.

Did any one desire you to give it to him?—No person.

Had you any suspicion that it would be asked for this day?—Not at all.

Were you not examined for a long time, upon the last trial, about your notes? did you not think you would be examined again concerning them?—I did not.

How long were they in your possession before Saturday?—They were not out of my possession.

Then you had them in your possession for three months before the trial, and you did not give them out of your possession until three days ago. Is that M'Donogh to be examined here?—Yes.

Has he a copy of those informations?—He has.

Then each of you, the constable and the clerk have a copy of the informations?—Yes.

Do you not believe that M'Donogh had lost his notes?—I believe so.

Do you not believe that he had notes?—He had, but destroyed them.

When?—Before the last trial.

How long before do you believe he did destroy them?—I cannot say, but I believe he destroyed them after he swore his examinations.

Why do you believe he destroyed them?—Because I heard him say he destroyed them.

Where did you hear him say so?—In this court.

Did you hear him say so any where else?—No.

Did you not hear him say, that he had a copy of the informations?—I did.

And you had two documents in your possession on the late trial, and produced neither?—I had.

M'Donogh had his copy of the informations?—He had.

Why did you give up your copy to M'Donogh on Saturday last?—He asked me for it, when I was going out he desired me to leave a copy of the informations for him.

Did he say, that any person desired him to ask you for it?—He did not.

Did you ask for that copy since?—No.

What do you believe he wanted it for?—I cannot say, I believe it was by order of the chief clerk.

Who is he?—Mr. Crawford.

Was it by his order, that M'Donogh asked you for a copy of the informations?—I suppose so.

Did he ask you for the notes at the same time?—He did not.

Mr. Justice Osborne.—I have read the informations, and I do not see the least variance between what he has sworn in them, and what he has now sworn on the table.

Lord Chief Justice.—Upon the last trial, it was considered, that he swore more positively against Doctor Breene, and therefore he was examined by the Court. He explained himself, by saying, that he did not mean to swear positively against Doctor Breene, and upon looking into the informations, it appears, that it might bear an argument, whether he did swear positively or not.

Mr. Justice Osborne.—I will read the part of the informations of the witness, John Shepherd, relating to the evidence now given by him. Informant saith, that seven persons were named, Dr. Edward Sheridan naming one, that person named a second, and he named a third, and so on, until seven were nominated. Informant saith, he could not distinctly hear the names of all the seven that were nominated, but heard the names of some of them, viz. Mr. Sourlog, Mr. Cole, and Mr. John Breene. That said seven persons, as soon as they were nominated, retired for a short time, and returned in about 4 or 5 minutes."

John Shepherd, re-examined by Mr. Sergeant Moore.

The last trial was on the 21st of November; you were examined on that day?—Yes.

You had not your notes on that day?—I had not.

At that time you could not account for them; when did you get them?—Next morning.

Did you come here, on that morning, with them?—I did.

What did you do with them?—I gave them to young Mr. Kemmis.

Did you give them time enough to have been produced upon the second day of trial?—Yes.

Are these the notes to which you allude?—They are.

Mr. Burne.—My lord, I request to see them.

Mr. Sergeant Moore.—You are at liberty to inspect them.

Mr. Burne.—(to witness) When did you give these notes to Mr. W. Kemmis?—On the second day of trial.

Did you see them since?—Mr. W. Kemmis shewed them to me last Sunday.

What did he say?—He asked me did I remember the paper; I said, I did.

Then he had a doubt of your hand-writing?—He did not say so.

Are these notes exactly in the same state as when you gave them to Mr. W. Kemmis?—They are, with the exception of a memorandum which he has made upon them.

[Court adjourned.]

Note. After the Court had adjourned, and before all the judges had retired, it was stated, that the counsel for the traverser had possession of the notes of the witness (Shepherd), and were copying them; judge Osborne, who had not left court said, that they ought to be restored to the crown solicitor, and produced by him again when the Court sat in the morning.

Wednesday, 29th January, 1812.

Mr. Burton.—My lords, the notes of Shepherd, the witness, were produced at the close of his examination yesterday evening; they were put into the hands of Mr. Burrows at the time when the Court adjourned. He wished to take them home along with him, but was not permitted; however, they were to be produced this morning, but now I am not allowed to see them unless we give them in evidence.

Mr. Justice Osborne.—Have they been read in evidence?

Mr. Joy.—No, my lord, they have not.

Mr. Attorney General.—My lords, this is the consequence of yielding too much. A great deal was said last trial respecting the notes being lost: the witness has since found his notes, and they are now produced. He may be examined respecting them; but they

are the notes of the witness, and have not been made evidence.

*Mr. Joy.*—We consent, on the part of the crown; to have them read, and let them go to the jury.

*Lord Chief Justice.*—If both parties wish to give them in evidence, let them be read.

*Mr. Gould.*—My lord, have we not a right, to examine, whether these notes be of the witness's hand writing?

*Mr. Justice Osborne.*—These notes are the private property of the witness.

*Mr. Jebb.*—The witness may be kept upon the table, while the officer of the court reads the notes.

*Mr. Joy.*—Or we have no objection to let the witness retire, and come again if the notes be given in evidence to the jury; but we object to the notes being given into the possession of the counsel for the traverser, to enable them to make some other use of them.

*Lord Chief Justice.*—The witness may be called and the counsel for the traverser may interrogate him, as they think right. With regard to the notes, they ought to be produced, but no observations can be made upon them unless they are read in evidence.

*Mr. Burton.*—We may make observations upon their not being produced.

*James M'Donogh sworn.*—Examined by  
*Mr. Sergeant Ball.*

Do you hold any situation in Dublin?—I am a clerk in the head office of police.

*Lord Chief Justice.*—Do the counsel for the traverser desire any further examination of the last witness?

*Mr. Burton.*—Not now, my lord.

*Mr. Justice Osborne.*—What do you mean by saying now? It appears to me, that the notes are conceded to you. I think they should not be produced when another witness is examined. But the rest of the Court think otherwise.

*Lord Chief Justice.*—Let them be produced.

*Mr. Joy.*—My lords, we submit to this, if it ever was done before, to take the notes from an individual who is examined as a witness. *Mr. Burrowes* wanted to take a copy of these notes. Surely that cannot be permitted. If the counsel for the traverser consent to their being read, we submit; but otherwise they have no right to them.

*Mr. Burrowes.*—My lords, the witness did allege, that he corrected his memory by looking at memorandums, and he looked at some again here; that entitles us to cross-examine him respecting the paper, and we cannot do so without looking at it.

*Mr. Joy.*—My lords, we require a decision

upon the strict rule of law, and will be bound by it.

*Lord Chief Justice.*—I have no recollection of such a matter having occurred before. The witness certainly spoke of these notes.

*Mr. Joy.*—But, my lord, they were not given in evidence: they were mentioned by the witness, and they were produced to shew that they are in existence.

*Mr. Justice Daly.*—I think, that where the witness speaks from notes to refresh his memory, the opposite party may cross-examine him, to ascertain whether those notes were genuine or not.

*Mr. Justice Day.*—Cannot the counsel for the crown give the notes to the counsel for the traverser, to enable them to cross-examine the witness?

*Mr. Joy.*—Yes, my lord, to cross-examine the witness. We wish them to do that; and let the notes be read; but the counsel for the traverser want to have these notes, with a view to cross-examine another witness.

*Mr. Sergeant Moore.*—My lords, I think I may be privileged to say a word, having examined the witness respecting whom this discussion has arisen. With respect to these notes, the witness did not say a word on his direct testimony; but after his cross-examination, they were produced, because they were shouted for; they were seized upon by manual force, in the same spirit with which these trials have been conducted from the beginning, with an indelicacy not heretofore practised.

*Mr. Burrowes.*—My lords, I am sorry that the expression has escaped from the learned counsel. There can be no mistake as to the person to whom he has alluded; but I aver, that I did not lay violent hands upon the paper; and I also aver, that the learned gentleman did promise me that I should have a copy of it, and that he violated his engagement.

*Mr. Sergeant Moore.*—When the paper was taken from me by manual force, I was obliged to get it back by stratagem.

*Mr. Justice Osborne.*—The matter should be considered this day, exactly as if an adjournment had not taken place yesterday. At that time the informations were in the hands of *Mr. Burrowes*; it was objected that he had not a right to take a copy of them. I thought he was not entitled to a copy of them. But I think, they should now be left in his hands again; and if he thinks proper, he may cross-examine the witness.

*Mr. Attorney General.*—We will make no objection to that course of proceeding; but they have no right to cross-examine the witness now produced, from informations sworn by another person.

[Here the witness *James M'Donogh*, was desired to withdraw, and *John Shepherd* was called.]



Mr. Burton.—My lords, I am very sorry, that any altercation should have occurred upon this subject. I have no wish to conceal what my object was. It will fall to my lot to ask M'Donogh some questions, and I wanted these notes for the purpose. It is said they are not his notes; but still, I have a right to cross-examine from them, and afterwards to ask Shepherd a question or two. I think that is my right. It is now proposed to call Shepherd again; and it we cross-examine him further, we may have the notes. I do not say, that we will do so; but I want the notes, in order to cross-examine M'Donogh.

Lord Chief Justice.—From the manner in which the notes were produced on the table, I thought that counsel for the adversary had a right to look at them, and to cross-examine the witness, whose notes they were: but unless they are given in evidence, the adversary has not a right to a copy of them; neither has he a right to the possession of them, for any other purpose, than that of cross-examining the witness whose notes they were.

Mr. Burton.—My lords, suppose Shepherd remained in Court: could we not cross-examine any other witness, as to what Shepherd said?

Mr. Justice Day.—So you may; but I do not think that you have any right to the possession of the notes for that purpose.

Lord Chief Justice.—If you wish to read the notes in evidence, there is an end of all objection; and you may then make whatever use of them you think proper.

James M'Donogh sworn.—Examined by Mr. Sergeant Ball.

You have stated, that you are a clerk in the police-office?—Yes.

Were you examined upon the trial of Doctor Sheridan?—I was.

Do you know the Roman Catholic chapel in Liffey-street?—I do.

Were you there in the month of July last?—I was.

Upon what day?—On Wednesday, the 31st of July.

At what time of the day did you go there?—Between twelve and one.

Were you accompanied by another person?—I was.

Who accompanied you?—John Shepherd.

Do you mean the witness who was examined here?—Yes.

Was there any assemblage of persons in the chapel?—There was a considerable number.

Did you remain there?—I did.

Did you stay in the body of the chapel, or did you retire to any particular part?—I went to the gallery.

Could you observe from the gallery what proceedings took place?—Yes.

What proceedings took place? was any person in the chair?—Yes, Dr. Sheridan.

Did he take the chair after you went there, or was he in the chair when you arrived?—He was in the chair when I went in.

Did you observe any person address the chair, or the meeting, upon that occasion?—Yes.

Who did so?—Mr. Thomas Kirwan.

Do you know that gentleman by sight?—Yes.

Is he in Court?—Yes; there he is.

What was the subject of his address to the chair?—He proposed that a petition should be presented to his royal highness the prince Regent, and both Houses of Parliament, praying for a removal of the penal laws existing against the Roman Catholics of Ireland.

What was the fate of the motion?—It was seconded, and carried unanimously.

Was the question put upon it whether it should be passed or not?—I saw no objection made to it.

Was there any other motion made?—There was.

By whom?—By Mr. Kirwan.

What was the second motion?—He moved, that five persons be appointed to present the said petition, and that said five persons should also represent the Catholics of that parish in the general committee of the Catholics.

Was that motion seconded?—It was.

Was the question put upon it?—I do not recollect the putting of the question; but it was moved by Mr. Kirwan, seconded by some other person, and carried unanimously.

Was there any other motion made?—There was.

By whom?—Mr. Kirwan.

What was it?—He proposed, that seven persons, then present, should be appointed to elect the five members of the committee; but that none of the seven were to be eligible to be of the committee.

Was that resolution seconded?—It was.

And carried?—Yes.

Were there seven persons nominated, pursuant to the resolution?—There were.

In what manner did the nomination take place?—By Doctor Sheridan naming the first, that person named a second, the second named a third, and so on until the seven were named.

Were those seven persons present?—I believe they were.

What was done after those seven were nominated?—They retired for a short time.

Did they go out of the chapel?—I cannot say.

How long was it before they retired?—It was about ten minutes.

When they came back, what was next done in the assembly?—They proceeded to mention the names of the five persons, whom they had elected.

Were those names publicly mentioned?—Yes, they were.

Do you remember the names?—I do; they began with Doctor Sheridan; the next was Thomas Kirwan, the next was Henry Edmond

Taafe, William Sweetman, and Richard Sheil.

What was next done after these names were mentioned?—When they named Dr. Sheridan as one of the committee of five, it was moved that he should leave the chair.

Was any person to take his place?—It was moved that Dr. Burke should take it.

Was that done?—It was.

What was next done?—Dr. Sheridan's name was put by the chairman, Dr. Burke, to the vote of the meeting. Was Mr. Kirwan's name put, that he should be one of the committee of five?—It was.

Did he decline to be one of the committee, or how did he conduct himself?—When his name was voted, he returned thanks, and said he would discharge the duty of the trust reposed in him, or something to that effect.

Did Dr. Sheridan afterwards resume the chair?—Yes; after he was appointed, it was moved that Dr. Burke should leave the chair, and that Dr. Sheridan should take it again, which was done.

*Lord Chief Justice.*—Do you mean, that after the vote upon Dr. Sheridan's nomination was carried he took the chair again?—Yes, my lord.

*Mr. Sergeant Ball.*—Did Dr. Sheridan quit the chair again, before the meeting was dissolved?—He did.

For what purpose?—It was moved, that he should leave the chair, and that Henry Edmond Taafe should take it; and the thanks of the meeting were then returned to Dr. Sheridan for his proper conduct in the chair.

Did you, during that day, hear any thing mentioned in the assembly relative to a proclamation which had issued?—Yes; I recollect, early in the business of the meeting, there was some person about to move some matter; and another of the assembly interrupted him, and begged it might be withdrawn, as it would retard the business of the day; and asked whether he had heard of a proclamation which had issued.

Was the motion made, or was it withdrawn?—It was withdrawn.

Did Shepherd stay with you while you continued in the chapel?—Yes.

*Mr. Justice Day.*—When Dr. Sheridan resumed the chair, did he put the question upon Mr. Kirwan?—He did.

And upon the rest?—Yes, he put the question upon four names.

*James M'Donogh cross-examined by Mr. Burton.*

You were examined upon the last trial?—Yes.

And so was your friend Shepherd?—Yes.

And Mr. Huddleston?—Yes.

These were the only witnesses who were examined on behalf of the crown?—That is all I believe.

You do not pretend to have a recollection of the precise exact words; you only give

the substance of them, as you recollect?—Yes.

You do not give the precise words?—What words do you mean?

Do you take upon you to say, that you state the very precise words which were uttered?—No.

You mentioned at the close of your statement, "to that or the like effect."—If you ask me as to any exact words, I will say whether they were uttered or not.

Upon the last trial, you did not pretend to say that you could tell every word; can you tell now every word?—I do not recollect every word that was used.

I suppose you to be a very fair man, and you appeared so upon the last trial; you were employed to take notes of what passed?—Yes.

Who was your commanding officer; was it major Sirr?—No.

Was it not he that sent you?—It was not.

You did not recollect upon the last trial?—I could not say which of the magistrates sent me.

Can you say now?—I can; I have learned since, that it was in consequence of a message I received from Mr. Farrell, the chief constable, that it was the desire of the magistrates I should go there.

You were mistaken then upon the last trial?—I believe not.

You said you had orders from one or other of the magistrates, major Sirr or Mr. Hare?—It was in consequence of an order from one of them.

You cannot tell which of them?—I cannot.

You thought it was one of them?—I did.

You have learned since otherwise?—I have.

When did you see Shepherd's notes last?—The last time I saw them was on Sunday last.

Who showed them to you?—I saw them in Mr. Kemmis's house in Kildare-street.

Who showed them to you?—Young Mr. Kemmis.

You read them?—I looked over them; I do not know that I read the entire of them.

Why did he show them to you?—He asked me, did I know them.

Do you know Shepherd's hand-writing?—I do.

Did he ask you whether they were in Shepherd's hand-writing?—He asked me, whether these were the notes which Shepherd took.

And you read them from beginning to end?—I did not.

Why did you stop?—I can't tell.

Did Mr. Kemmis hurry you?—No.

Did he desire you not to read them?—No.

Did you read a dozen lines?—I did not reckon them.

Did you read six?—I can't say.

Or more than six?—I can't say.

Mr. Gould.—My lords, it is always usual to hear arguments, whether there be evidence to go to the jury.

Mr. Justice Day.—The objection is, that there is no evidence to support a particular averment, which though not material, yet being laid, it is contended should be proved.

Mr. Gould.—And if not proved, the jury must be discharged of that count. It is a mere question in law, and that is the practice in Westminster-Hall. Suppose it were a civil action, I might call for a non-suit. I cannot do so in a criminal case. But the Court is to decide this whether there is a *scintilla* of evidence to support the first count? I maintain, that there is not.

Mr. Townsend.—My lords, there is a simple answer to all the objections. The statement upon the record is, that a committee of Roman Catholics was to be appointed, and that they were required to do certain things. It is proved that such a committee was appointed, and that they were to transact certain matters, which matters, so proved, constitute the criminality which is alleged.

Mr. Burrowes.—If the counsel for the crown are disposed for a collateral issue to the jury upon the matter in controversy, we are satisfied.

Mr. Solicitor General.—My lords, we are somewhat embarrassed by this course of proceeding. What has been last argued, I thought had been disposed of by the Court. I have a right to complain, that Mr. Perrin, who rose to reply, made new objections, and these have been enforced by Mr. Burton; and then a collateral issue is proposed.

Lord Chief Justice.—We think it best, that Mr. Burrowes should go on with his case. If there be any defect on the part of the prosecution, he may rely upon it, and the adversary can reply to him.

Mr. Burrowes.—My lords, I did hope that the question of law was upon a narrow ground, which might be decided in a short space of time. I am disposed to let the case go to the jury upon the question, whether, *de facto*, the meeting of the 31st of July elected representatives for a portion of a parish out of the city of Dublin. I am really suggesting a mode to save public time, and to leave the case now to the Court and the jury, to determine the fact, upon that part of the case. If the jury shall determine in a certain way, it will not be necessary, on behalf of the traverser, to go further.

Lord Chief Justice.—Mr. Burrowes, you had better go on.

Mr. Burrowes.—Gentlemen of the jury: I cannot admit with his majesty's attorney-general, that we have been skulking from the merits and justice of this case. I appeal to the candour of every man who has attended

this trial, whether the charge is not more aptly applicable to himself. We have offered, and still offer to relieve you from the invidious duty of deciding the question of law, by taking your verdict on the fact, and leaving the law to be definitively settled by the *dernier* resort. It never was more necessary to separate the law from the fact. Yet, though not one of our offers have been accepted, the attorney-general represents our conduct as shuffling and prevaricating. Do you see any want of candour on our side? Do you not see a glaring want of it on the other? My learned friend knows, that the opinion of the court of King's-bench is with him, and such is his perverted notion of true dignity, that he seeks the sanction of a jury to uphold the Court in the point of law, while he shrinks from the opinion of the twelve judges, and the House of Lords.

Gentlemen, there is more of artifice than pride in this course. He has more than misgivings as to the probable consequence of a compliance with our candid and fair offer. He dreads the opinion of the *dernier* resort upon a special verdict, and trembles for the fate of his prosecution before that high tribunal, to whose decision every Catholic in Ireland—to whose judgment my lord Fingall would bow the head of obedience. He avows that it is the intention of the administration, both at this side of the water, and the other, to put down the Catholics of Ireland.

Mr. Attorney General.—I said no such thing. I said it was the intention to put down the national convention of the Catholics, which is, and ought to be, the endeavour of every honest man.

Mr. Burrowes.—Well, then, to put down that convention, which he has called an illegal assembly; but which I deny to be so, but which I assert to be the constitutional organ of a deserving and suffering people, commissioned to carry their complaints to the throne and to parliament. He denies what I thus affirm; but he, who has imputed a shuffling and disingenuous conduct, himself skulks under the wings of this court, and the expected compliance of this jury from that final court, to which we seek to carry this great question, surely not unworthy of the highest tribunal.

I again call upon him—I implore him—I implore the Court, which I address with reverence—I implore the jury—all to concur in a special verdict; to separate the fact from the law—to leave the law to this Court; who cannot want—who cannot wish the sanction of a jury upon a question, which they are told is foreign from their jurisdiction. In order to remove all difficulty, in order to silence all pretence that we do not avow what we have done, I offer to admit every fact to which a particle of evidence has been offered; every fact which the attorney-general has any grounds for saying really took place, let them all be found by the jury—let the attorney-general prepare the

special verdict himself, he shall not meet any uncandid obstruction; he shall receive every assistance. The jury will be relieved from difficulty. The Court may pronounce the law from themselves, and by themselves the judgment will be equally valid—equally effectual—in all respects the same—except that it will be open to appeal—which cannot but be gratifying to this Court—and which ought not to be obstructed by the attorney-general, if his object be (what he avows) to vindicate the dignity of the law, and not what some suspect, to answer a transient and a party purpose, and obtain what may be miscalled a victory over the Catholic people, and the Catholic pursuit.

The attorney-general, I find, will not consent to this fair proposal. He will demand from you, gentlemen of the jury, a general verdict deciding upon the law, and precluding all appeal. In doing this, he forces upon me a duty upon which I enter with reluctance, but which I shall discharge with firmness. It is not for any man who wears a bar gown, to shrink from the discharge of any professional duty whatever. Difficulties may interpose in his way; and even though he may be certain to encounter obloquy and misrepresentation on one side or the other—possibly on both—from the unfortunate state and temper of the times, whatever course he may steer, his duty is plain, his course is direct. Let him call into council his reason, and his conscience; let these counsellors be unbribed and uninfluenced, let him obey their mandates inflexibly and boldly, and he may rely, that the final judgment of this world will probably be with him, but that with infallible certainty, he will stand acquitted before that tribunal from which there cannot be any appeal, because in it there cannot be any error.

I will follow such counsel, as I recommend to every man, standing in such circumstances, as I do; I obey the suggestions of those monitors, who tell me, that it is my duty to urge you, gentlemen of the jury, to find a special verdict, as you undoubtedly have a right to do, and if you do not, to proceed to argue in your hearing and with a view to convince you, as well as the court, that under a sound and rational construction of the Convention act, my client is entitled to a general acquittal.

*Lord Chief Justice.*—So far as the Court has already decided upon the same subject, I should hope, it will not now be controverted.

*Mr. Burrowes.*—Then, my lords, I do not feel how I can argue this case.

*Lord Chief Justice.*—I find my brethren have no objection to hearing you on the point.

*Mr. Burrowes.*—To entitle me to that privilege, I will refer your lordships to a very familiar case, and one more analogous cannot well be supposed.

*Mr. Justice Day.*—It is no more than the rehearing of a case.

*Mr. Burrowes.*—My lords, I have considered this matter much and deeply. I would not establish an indecorous precedent, to gratify any man or body of men. I admit the maxim of law, “*Ad questionem facti respondent Juratores, ad questionem legis respondent iudices,*” but I assert that it has its limits and exceptions, like every other principle and maxim of law. I deny that jurors are bound on constitutional questions to take the law from every judge who may preside. I assert, that they are not bound to act in violation of the plain suggestions of their own understandings, upon subjects not difficult or abstruse, and in which the rights and liberties of a nation may be involved. We owe much of our freedom to the intellect and spirit of juries, who upon such subjects, act for themselves and for the nation, when the judges who presided, mistook or mistated the constitutional law of the land. I will not dwell upon times when a systematic attack was made upon every principle of genuine and rational liberty, when judges were dependent and time-serving. I know, and I exult in the happy change which exists in that respect in modern times; but I will say, that the time never has arrived, and never can arrive, when the judges should be considered as in themselves a sufficient protection of the people's rights, and that to inculcate universal and passive obedience in juries to the doctrines of the Court, would be to deprive the nation of its best protection, upon great subjects and upon great emergencies.

I call your attention to modern times, and to a subject so closely analogous to the present, that no nearer affinity can be imagined. The liberty of the press and the right of petitioning, may be considered as twin privileges of a free people. They are equally necessary, they ought to be equally sacred. For more than 20 years in England, the whole Court of King's-Bench considered the question of libel or no libel to be a question of law, and did express that opinion in every case, and claimed exclusive jurisdiction upon the subject; and yet in every case the counsel for the defendant appealed to the jury to decide, as if it was completely and peculiarly within their cognizance. In no instance was that opinion of the Court submitted to, so as to preclude the counsel from referring to the jury the question of libel, or no libel, and rousing their constitutional feelings upon a question of such importance. The contest was conducted with candour and decorum, and it was not considered as any aspersion upon the Court; but the advocate asserted his right, and struggled with the opinion of the Court, until a declaratory act was passed, deciding that the counsel was right, and the court in error, during that whole period. It is intitled “*An act to remove doubts respecting the functions of juries in cases of libel;*” and it recites, that doubts have arisen, whether upon the trial for a libel, it was competent to the jury to give their verdict upon

the whole matter in issue; and it enacts that the jury may give a general verdict of guilty or not, upon the whole matter put in issue, upon the indictment or information; and shall not be required or directed by the judge, to find the defendant guilty, merely on the proof of publication; and it is provided that the judge may give his opinion, and direction in like manner, as in other criminal cases; and it is also provided that nothing shall extend to prevent the jury, from finding a special verdict, in their discretion as in other criminal cases, recognizing the right of the jury to find a special verdict in every case. Nothing can be more analogous. In those cases, the alleged abuse of the censorial power of the people, was the subject of trial. Here the right of petitioning is said to be abused, and it is denied that you shall judge upon the subject. I do say, that neither of these great reserved rights of the people can be safe, if they are not in the custody of juries; and that you cannot afford them protection, if you must obey every judge upon the subject.

**Mr. Justice Day.**—You need not contend for your right, where we have been inviting you to the argument.

**Mr. Burrows.**—My lord, I thought it right to state the clauses of this act, after I had been interrupted. I beg to press that essential part of the act, which authorizes the jury to find a special verdict, *as in other criminal cases*; and to press upon their minds and consciences that if they do not generally acquit, as the former jury did, they should not be prevailed upon by a general verdict to close the avenues to further inquiry against their fellow subjects, and upon so interesting a subject.

I shall proceed to argue the law of the case. If I make an impression, I am confident it will be yielded to; whether I do or do not, I hope that your lordships will concur with me, in recommending a special verdict.

I will not go over the whole of the ground, which I travelled upon a former occasion, but I will suggest a few observations, which appear to me to be not only forcible, but conclusive. The indictment contains allegations which I need not now state in detail to your lordships. The attorney-general has fairly stated them. And gentlemen of the jury if you remember them, it is sufficient for me; and in truth the gist of the crime can be stated in one proposition. The criminality of the traverser is to be collected from the general nature and character of that assembly described by the resolutions laid in the indictment. *You are called upon to pronounce, that the meditated committee was a body formed to be REPRESENTATIVES of the Roman Catholics of Ireland, under PRETENCE of petitioning.* The attorney-general states this committee to be a monstrous innovation, tending to the usurpation of the legitimate functions of the government of the country. But I say, it is not a representative assembly, according to the true import of that word, and

the meaning of this act, upon any evidence given before you. A representative assembly must be that, to which is imparted the reserved rights of the people, or any portion of the people. It must be an assembly appointed for general purposes, with the power of exercising that authority at their own discretion, or usurping such power. But at all events, in order to constitute the representative character, it is necessary that power or authority shall be imparted from the body electing, to the body elected, to be exercised in their own name, and according to their own discretion, or that such power shall be usurped. Such is the import and meaning of the word upon every occasion, where it is to be found in any of our legal or constitutional writers, and no attempt has been made, to show that it ever was used, in the sense now contended for by the crown lawyers. Nothing is more intelligible than the distinction between a representative and an attorney or delegate appointed to act as an instrument, in performing some defined service or duty. The crown lawyers well understand, and do not deny this distinction, but contend, contrary to reason, and the cautious wording of the law, that it extends to every delegation, however restricted, where the object is, to petition; as if the law was enacted solely extinguishing that right, which it declares shall in no way be impeded.

Gentlemen of the jury, my argument has been much misrepresented, but no attempt has as yet been made to answer it.—I have been represented as denying, that there could be any such thing as an assembly which would be illegal, in its very constitution. I never did deny it.—I said, that any assembly appointed for general purposes, or assuming to represent the people for general purposes, would be illegal; and I not only conceded so much, but referred to a particular assembly of that description, whose avowed objects made it palpably illegal; and against whom the act was directed. They exercised general rights, and in the character of representatives of the people, they pronounced upon every political topic which could occur:—circumscribed by no boundary—but assuming every power inherent in the people.—That was the nature of the Dungannon assembly which met on the 15th of February, 1793. Gentlemen, you are to collect how they were appointed, or what powers they usurped, from their very acts.—For not only were they illegal by their very constitution—but by assuming those functions, and extent of popular rights, which it would have been illegal to confer upon them, and which they exercised in their own name, as the representatives of the people.

Gentlemen, that assembly resolved, “That it is the constitutional right of the people, and essential to the very being of their liberty, to be fully, and fairly represented in their own house of parliament;—that the present state of the representation in the House of Commons, is partial, and inade-

"quate, subversive of the rights of the people, and an intolerable grievance."—"That it appears to us, that several lords spiritual and temporal, as well as commoners, direct the return of more than two hundred members of the Irish House of Commons, being two thirds of the representation of the people.—That it is the opinion of this meeting, that all boroughs should be disfranchised, and representation established on fair, and rational principles, by extending the elective franchise equally to persons of every religious persuasion, by elections frequently repeated, and by a distribution of representatives proportioned to the *population and wealth* of the country.—That deeming a complete parliamentary reform essential to the *peace, liberty, and happiness of the people*; we do most solemnly pledge ourselves to each other, and to our country, that we will never abandon the pursuit of this important object, but zealously and steadily persevere, until a full and fair representation of the people shall be unequivocally obtained.—That a power be vested in a committee consisting of thirty persons, for the purpose of re-convoing this assembly (as occasion may arise), until the constituent body is pleased to return another representation of the province; and that on a recommendation by letter to William Sharman, esq., at Moira, signed by seven of the committee, he shall by circular letter to the rest, procure the sense of the majority, and if the measure of a provincial meeting be by them approved of, he shall forthwith issue a summons, in the name of the committee, for that purpose—(here follow the names of the committee)—That the above-named committee, be authorized to communicate with the other provinces of this kingdom, at this important crisis, and to consult proper means of calling a *National Convention*, at a future day, should circumstances render such a meeting unavoidably necessary.—Resolved, that we behold with indignation, an intention of embodying a *MILITIA* in this kingdom, a measure which only has *ministerial influence* for its object, which we deem *burthensome and totally unnecessary*.—Resolved unanimously, that it is with infinite concern we behold this kingdom likely to be involved in the horrors and expenses of a *foreign war*; a war, by which, as a nation we can gain nothing, but, on the contrary, must expose our commerce to depredation, and our country, to unprovoked hostility."

Such was the assembly, and such the resolutions, which produced the Convention Act. The attorney-general of that day, your lordship's noble predecessor, who was amongst the principal framers of that act, and who proposed it in the House of Commons, declared at the time, that the Dungannon convention, and such general representative bodies, were the objects of that law and he disclaimed its application to delegates for defined purposes—and anxiously guarded against the imputation

of conveying or implying by the act, any censure upon the Catholic committee, who were then in existence.—We all remember that revered character.—We know that he loved the laws and constitution, better than life itself.—The glories that surrounded his last moments, and which rendered his death as enviable, as it was disgraceful to the monsters who caused it, cannot soon pass away—his memory will live entombed in the heart of every Irish lawyer, as long as the profession shall retain any dignity, or the laws, upon which he shed such lustre, shall be held in any estimation.

If it shall be said, that his opinion was delivered as a debator, and cannot be received as interpretative of the law, can the same objection be made to the act of parliament passed in the same session, almost on the very day, upon the admitted solicitation of a Roman Catholic committee, constituted like the present—and which recites their peaceable and loyal demeanor as the very ground and title of their relief? If the history of the times, disclosed in the most solemn and authoritative way, can be received as explanatory of any law, this statute interpretation of the meaning of the act ought to close the question for ever, and consign the new-fangled and unconstitutional construction, now for the first time attempted, to eternal condemnation.

But the statute itself, by the exception which it introduces, explains, beyond any rational doubt, what kind of assembly it had in contemplation. After defining the assembly upon which it intends to act, by the well understood term *represent*, it saves out of its enactment, "the knights, citizens, and burgesses, elected to serve in parliament," and excepts "the Houses of Convocation duly summoned by the king's writ." If the statute was intended to suppress simple delegation for the sole purpose of petitioning—if it did not use the term *represent* in the sense which I have ascribed to it—in its known, legal, and constitutional meaning—if it did not apply its provisions to assemblies similar to parliament, representing the people in a similar way, and in some degree encroaching upon their high prerogatives, why should it be found necessary to except the House of Commons—the legitimate representatives of the people? It has been stated, that the exception was, and must be considered as unmeaning; that the House of Commons could not be bound by any such enactment, be it ever so plainly included within its provisions. This is not constitutional doctrine. The legislature possesses a paramount authority.—It would be high treason to deny it.—They can even alter the succession to the crown—God forbid they should exercise such a power—but there is nothing to prevent it, if they thought fit; and, therefore, when they were enacting a law, to prohibit representative assemblies, it was thought necessary to except even the House of

Commons. The exception therefore, plainly indicates the character and quality of that body upon which the exception acts. What remains within the sphere and operation of the law, must be of the same character as that which is excepted from it. Thus the term *represent*, so studiously selected to characterize the prohibited assembly, and the nature of that assembly which is reserved by the exception from the operation of law, conspire to establish the meaning of the legislature, and to put down the construction now contended for.

It has been said, that according to my construction no assembly could be illegal under the act, unless it should usurp legislative functions. This gross misconception is founded upon a notion, that the House of Commons have no functions that are not legislative.—Is it forgotten, that they are the grand inquest of the nation? that they exercise a constitutional control over the prerogatives of the crown? In these respects, as well as in their legislative character, they represent the people.—As representatives of the people, they pronounce upon the expediency of peace or war, upon the conduct and capacity of ministers, upon abuses affecting the common weal—they impeach—they prosecute—they address the throne—they do all these acts and every function they perform, as representatives of the people.—They have not a single quality that is not derivative. Their legislative functions are conferred without any reserve. If the people were to attempt to legislate, the constitution would be at once dissolved. But it is not the same with all the functions of parliament. The people have a right to exercise some of those communicated functions, in common with their representatives—and these I call the *reserved rights of the people*—the *right of petitioning* and a *consorial right*, are the most valuable of these rights. No country can be free when these rights cannot be exercised without impediment or restraint. The people have a right, in common with their representatives, to pronounce an opinion upon public men and public measures—upon peace and war—upon public institutions—upon every thing by which they may be affected. They may petition the parliament, or the king, upon any and all of these subjects;—they may do all these acts in common with their representatives. But they cannot appoint any other representatives for legislative purposes, or for those purposes, save the body appointed by the constitution. Any body of men elected, or assuming to exercise these reserved rights, encroaches upon the privileges of parliament and violates the constitution.—They do an act similar to encroaching the royal prerogative.—They are guilty of an high misdemeanor at common law.—This explanation was fully in contemplation of the legislature when the law was formed; therefore it was to prevent the monstrous misinterpretation now contended for, that the act is, in its language and name, as far as relates to the assembly in question,

*purely declaratory*. Such it appears to be from its title—such from the language of its enactment.—It creates no new offence; it only enforces the law. The counsel for the crown may affect to misunderstand, or to treat with contempt this distinction, and this reasoning—they may affect to misunderstand it, but most certainly, they never have answered or attempted to answer it;—they assert without any reason, from the language of the law—from the object of the law—or the consequences of the different construction, that all deputation is illegal—they never have drawn any limit, nor will they admit delegation in any degree. According to their construction, a committee of five merchants appointed to investigate subjects of trade, and to prepare a petition thereon, would be an illegal assembly, liable to be dispersed by any peace officer. According to their construction, such an assembly would be illegal at common law.—It would be illegal in England, where this act is not in force.

But, having contended that all delegation for petitioning is illegal, they declaim against assemblies usurping the functions of parliament, and assuming the whole rights and powers of the people. Read their speeches already in print—recall to your mind what the attorney-general has now uttered—every sentence, every word will show, that the assembly described as portentous and illegal, is a general representative assembly, whether by election or usurpation, such as I have admitted, at all times, to have been illegal, and against which the act provides.

The solicitor-general, in his former splendid and delusive speech, warned you against the danger of delegation, by calling your attention to the National Convention of France, and the horrors of the French revolution. Consult your reason, and see whether he can fairly call in aid that interesting event—whether it is not a mere appeal to your feelings and your prejudices? In answer to him, I assert, that the National Convention of France in no way resembled the Roman Catholic committee; it originated in known established orders of the state—it did not purport or affect to spring out of popular election—it openly, and from the beginning, assumed and exercised sovereign power. But what renders the comparison not merely irrelevant, but completely subversive of what he would inculcate is, that in fact the mischief of that assembly did not arise from its power but its impotence—not from its sovereignty but its subserviency—not from possessing and exercising the rights of the people, but from being under the influence of societies abroad, and accessible to all the variable violence of popular feeling and popular phrensy. In the same spirit is the argument urged, which calls your attention to the checks and regulations imposed by the wisdom of the constitution on the meetings and deliberations of parliament—the writ of *habeas corpus*—the power of dissolution in the crown—the slow and guarded forms of proceedings—the sergeant at

arms to preserve order—the very mace.—No doubt, if this were a legislative assembly, such or similar checks and regulations might be necessary;—but would not this be reckoned the extremity of folly or fatuity if urged by common advocates?—Does it not beg the entire question?—Does it not presume the body to be assembled for legislative purposes, or at least, as general representatives of the people? If there be any evidence of this, we submit at once. But do not let a character be ascribed to us which we disclaim, and punish us for want of those checks which are not necessary to the character which we avow, and which we really bear. Is it possible to express, how ridiculous it would be to establish a doctrine, that no voluntary or occasional association, for purposes legal and laudable, should be tolerated, unless convened by the king's writ, dissoluble at his pleasure, and clogged and encumbered with all the forms and ceremonies of a regular parliament?—This, though urged with so much pomp and gravity, is too frivolous for farther observation.

Having said so much on the construction of the word *represent*, I call your attention to the evidence. I dwell not upon the admitted discredit of the witnesses, by a former jury—I dwell not upon their studied anxiety to cure defects in their former evidence, and to persuade you that the word *represent* was used in the resolutions in Liffey-street—at the very moment when the body assembled were upon their guard not to give any advantage, by inadvertent language. The attorney-general has agreed to the criterion of guilt to which I refer you—I agree with him, that the guilt or innocence of the traverser must depend upon the character of the assembly, to which the deputies were sent, it is no matter by what resolutions, or in what language couched. I admit, with him, that the character of that assembly must depend upon the resolutions sworn to by Huddleston. I enter not into his conduct, his character, or his motives, or a discussion of the question—whether a base and infamous witness ought, in any imaginable case, be received, to cast the *onus* of disproof upon any accused person. I shall suppose all he has stated to be as true as gospel; but I contend, upon the principles which I have urged, that the resolutions sworn to by him attach no criminality upon the committee about to be formed. What are these resolutions?—The first resolution was, “That being impressed with the unalterable conviction of the undoubted right of every man to worship his Creator according to the dictates of his own conscience, we deem it our duty, thus publicly and solemnly to declare our decision, that no government can inflict any pain, penalty, or privation, for obeying that form of Christian faith, which in his conscience he believes to be right.”

Gentlemen, I need not comment upon this first resolution: it is perfectly innocent. The second resolution was, “Resolved, that we

“again petition the legislature, for a repeal of the laws affecting the Catholics of Ireland.” Thirdly, “That in exercising our undoubted right to petition, we will adhere to the ancient forms of the constitution, and the restrictions imposed by modern statutes.”—Manifestly declaring, in that proposition, that they would exercise the right of petition, in conformity to, and obedience of, the statute law, and the Convention act among the rest: they were advised by numerous and able lawyers, that the appointment of delegates, *bona fide*, to prepare a petition to parliament, was not within the act; and being about to make such an election, they pronounced a declaration that they will conform to the law; and then they resolve, “that the committee to be appointed to prepare the petition,”—(and here is what is relied upon as constituting the guilt in this case)—“do consist of the Catholic peers, their eldest sons, the Catholic baronets and prelates, and ten persons chosen from each county, and five from each parish in Dublin.” It is contended, on the part of the prosecution, that this deputation, although for the limited and defined purpose of petitioning, and *bona fide* for that purpose, is illegal, without a question to be left to a jury, as to the motive, intention, or the use or necessity of such a committee to the end proposed. I trust, gentlemen, that you will not adopt any such exposition of this act.—The attorney-general relies much upon their number, and the various orders of society from which they are taken. I contend for it, that the statute makes no distinction with respect to the offence, flowing out of the numbers composing the assembly. It is the character of the assembly from whence alone the criminality is to be inferred. I admit, that the numbers may be urged as a circumstance to show that the pretence of petitioning was false; but in that view, it must always be a part of the consideration of a jury, and never can conclude the question in point of law.

There are some objects of petition, very simple in their nature; there are others very complicated. If the object was, to petition to remove a bigoted or infatuated minister, a man not competent, in the opinion of the people, to guide the vessel of the state, it would be a simple and easy task to prepare such a petition; but there are other objects more complicated; and never was there a subject so complex as that which was in the contemplation of the Roman Catholic committee. Gentlemen, you know that the penal code was a grievous accumulation of many years—that it consisted of every enactment which prejudice, fury and folly, could suggest to any bigot, whose passions erected him into a legislator. I admit, that a great portion of that code has been repealed—much, however, still remains. Many, various, and galling are the restrictions and incapacities which still afflict and degrade the Catholic body; they affect every class and order of the Catholic community; and there never can be



imagined a case where it would be more reasonable, that many should be occupied in investigating the subject, and removing difficulties, which ignorance and prejudice throw in the way of relief. The introduction of peers and baronets, and bishops, into their committee, has excited much pretended alarm, and caused much animadversion. Can the Irish government be ignorant that it has been the wish of every preceding government to treat with the peers and the bishops?—It was always considered as a mark of respect to the Castle, to have these exalted personages blended with the committee with whom the government were to treat. One would imagine, it would be decisive upon this point, to state, that a Catholic committee, similar to the one which has been in contemplation, and actually constituted upon the same principles, did exist in the year 1793—that they treated with the government here—that they treated with the ministers of England;—and that individuals of them were introduced to the king himself.

It would be a bitter reflection upon your character, as Irishmen, to presume you to be hostile to the principle or pursuit of these committees.—Persuaded I am, that whatever your religion may be, or your zeal for that religion—whatever your natural, manly, and constitutional hatred of slavish principles—whatever your predilection for your own creed may be, there is not a man of you who does not rejoice at the blessings which have flowed from the breaking down of the penal code. Some of you are old enough to remember this country in a state of the lowest degradation. Half a century back, it was so squalid and contemptible, that any stranger whom chance or curiosity brought to our shores, entered into it with terror, and left it with disgust. No historian or tour-writer named Ireland but in terms of reproach. The code which caused this lamentable condition, has been broken in upon by Protestant liberality—going hand in hand with Catholic zeal. It was a code calculated to degrade the Catholics—not merely to the state of the beasts of the field—but beneath them—to deprive them, not only of every natural and civil right, but of every thing that could embellish or improve the nature of man. Every inlet of knowledge was closed against them.—No Roman Catholic would be taught, even the rudiments of learning, but upon the terms of abdicating his principles, and surrendering his conscience, by renouncing his faith. Harsh measures were adopted to keep their minds as grovelling as their personal condition was abject. Not a ray of light could approach them, except such pilfered literature, as persecuted pedagogues could convey, or such barbarous philosophy as could be supplied from foreign universities, under the severest prohibitions;—as if ignorance were an antidote to superstition—as if the light of science would extinguish the light of the Gospel.

This code has been broken in upon, and is

in a rapid progress to a final extermination. Sorry should I be, that its course to destruction should be interrupted; if we look back to the period, when the restrictions were removed, we shall find that ill-founded apprehensions were entertained from the change. Some foolishly imagined that the constitution could not bear the shock; but what was the consequence? Population has been doubled within 30 years; property has increased more than ten fold; both are in a course of almost geometrical progression; their progress cannot be checked, except by measures too horrible to contemplate. Cold must be the heart, and shallow the head, which would not rather insist them in the service of the state, at a moment when no hand can be spared, and no heart should be alienated. It is preferable to do an act of substantial justice promptly than postpone it to a period, when its value must be diminished. The security of the constitution cannot be impaired, the protection of the empire will be secured.

Excuse this digression, the early and ardent conviction of my mind, that the fate of the empire and the constitution is vitally blended with this subject, forces me almost involuntarily to discuss it; when perhaps, the discussion may not be in strictness relevant. I return to the argument upon the Convention act.

It is stated by the indictment, upon which you are called upon generally, to pronounce that every proposition in it is true, that a representative assembly was to be convened, *under pretence* of preparing a petition to parliament. The indictment would be bad, and we should demur to it, and thereby confess all the other allegations, if the word *pretence* had been omitted, or the word *purpose* substituted. This we signified upon the former trial; yet though the crown lawyers have amended the indictment since, they have not dared to make this amendment. They contend that *pretence* in the act and in the indictment means *purpose*, whether true or false; and they require you to find a general verdict, which would imply that petitioning was a pretence, although in your consciences you should believe, that it was the *bona fide* purpose and the only purpose for which a committee was formed. They will not even consent that you should find a special verdict, lest you should find the purpose not to be false, although they pretend that it is indifferent whether it be true or false. This is the conduct of those who so liberally sling around them the imputation of shuffling and want of candour.

Gentlemen, this is an act promulgated to the public in the English language. The public are bound to construe and to obey it, at the peril of heavy punishment. I always understood, that words in common use are to be construed in penal statutes, according to common acceptance. If it were otherwise, laws would not be rules for conduct, but snares for punishment. I would ask any man accustomed to read the English language, whether

in ninety-nine places out of one hundred where the word *pretence* occurs, it does not imply falsehood or concealment, a *suppression veri* or *suggestio falsi*. If a person were to say, "it is a pretence, a mere pretence," would any man hesitate to understand him to mean a falsehood, not a real and true purpose? If a Roman Catholic were told, "he was pretending to petition," or "that he used petitioning for a pretence," would any man doubt that falsehood would be thereby imputed to him? If he answered, "that he was not pretending," or "that it was not a pretence," would he not be considered as disclaiming any concealed purpose? If he swore to such reply, in any case attached in court, would he not be convicted of perjury if it could be proved that he had another object in view than that avowed? Pretence sometimes, and but rarely, signifies claim of property or right, and when used in that rare sense, it imports a claim real or false, as claim always does. But I do say, in its general vernacular meaning, when it is not used to denote claim, it uniformly imports either a *suggestio falsi* or *suppressio veri*. This is not denied by the attorney or solicitor general. It is admitted, that the word *pretence*, in the statute, must convey the meaning I have given it, to every mind but that of a lawyer or a judge. But it is contended, that the word *pretence* has a technical meaning, to be found in the repositories of legal learning, quite different from its ordinary and obvious meaning.

What is the amount of all this? The subject is bound to know the law, and obey the law. Ignorance will not excuse him, misconstruction will not excuse him; heavy penalties await his disobedience. Yet the law is so written, that the whole community must understand it in one sense, and the judges must administer and apply it in another; and that a jury must condemn a man, and consign him to heavy punishment, for giving the law the very same construction which every juror would himself give it. Sorry should I be, that any foreign lawyer amongst those whose systems of jurisprudence and administration of justice we hold in such contempt, should be present to witness such doctrine, and such conduct. What would he think of our boasted Trial by Jury? What would he conceive to be our notion of the promulgation of our laws? Is not this an improvement upon the sanguinary expedient of the execrable tyrant, who used to write his laws in such small characters, and post them up in such high places, that his subjects could not know them, and therefore might afford a cruel nature constant means of gratification; constant opportunities of punishment? Is not no promulgation preferable to a promulgation calculated to mislead? Would it not be better to seal up the Statute Book, or publish our laws in a dead, or an unknown language, rather than publish them in a language calculated to delude and deceive.

But I trust no such principle of expiation

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will be recommended from the bench, or adopted by the jury. The word *pretence* is not a word of technical import, and your lordships will tell the jury, that they ought to understand it in the sense in which any man of good understanding must take it, in the statute in which it occurs. This every man who hears me, feels to be common sense, and certain I am, it will be decided here, or elsewhere, to be common law.

To support their assertion, that *pretence* must mean *purpose, true or false*, the crown lawyers have cited three statutes, all plainly distinguishable from this case, and surely not warranting the revolting inference, that the term had acquired, by legal use, a legal meaning contrary to its obvious and vernacular meaning, in a new and criminal law.

In the act made to punish the procuring money or goods upon *false pretences*, they infer from the use of the epithet, that the principal word would not imply it. If pretences implied falsehood, why introduce the epithet *false*? This is easily answered, murder always implies malice; perjury always implies falsehood and corruption; yet malicious murder, and wilful and corrupt perjury, are in daily use, and occur even in legal pleading. Again, "*pretence*" manifestly means claim, in that statute, the class of meaning in which no man can think it was used in the Convention act. Again, suppose the word *false* were omitted in that Statute, still it would be supplied in construction, or it would follow, that a man might be transported for demanding or obtaining his own money, his own goods, without any falsehood or any fraud.

The statute of Henry the eighth, in England, and of Charles the first, in Ireland, to provide against the sale of *pretended rights or titles, by persons not in possession*, is equally inapplicable as the former. In this statute, *pretence* manifestly means *claimed*, and it has been conceded without any detriment to my argument, that where *pretence* means claim, the claim may be well or ill founded. It would be childish to argue seriously that pretence does not mean claim in the Convention act, no man can imagine it.

The statute of Charles the second, against tumultuous petitioning, is equally distinguishable from the present. In that statute *pretence* is construed to extend to all cases, because the pretence must be false, from the very nature of the subject. It never can be deemed necessary, that a number of persons should accompany the presenting a petition to the king or to parliament, and to allege any such necessity must be false; but it has been already sufficiently argued and illustrated, that delegation may not only be useful in preparing a petition, but in fact, in many instances a petition could never be prepared, without the aid and intervention of some species of delegation. And this leads me to the last section of the act, by which it is enacted, "provided that nothing herein shall be con-

"stayed, in any manner, to prevent or impede the undoubted right of his majesty's subjects of this realm to petition his majesty or both Houses, or either House of Parliament, for redress of any public or private grievance."

Is it not manifest, that this clause connected with the word *pretence*, in the first section, jointly imports, that delegation, when it is resorted to as a pretence for petitioning, is illegal; but when it is really used to promote the real object of petitioning is authorised. It looks as if the framers of the law anticipated the misconstruction now contended for, and formed this provision for the very purpose of obviating it. This proviso surely was not introduced to save the right of petitioning by *individuals*, acting by themselves, and for themselves alone; no man asserts that such right was touched by the law, therefore it was unnecessary to save it. But the object being, to restrain delegation, when it might, and probably would, lead to public mischief, without preventing the use of it, when the object of petitioning might be assisted by its use, the proviso was framed to secure the latter object. Words could not be imagined more calculated for this end: "Nothing in the act shall impede the right—" Is not the right impeded, if *facilities* in the exercise of it be removed? Does not delegation, in many instances, furnish such facilities? Does it not in this case peculiarly? If this be denied, leave it to the jury. Let them decide whether the Roman Catholics of Ireland resorted to a committee, as a useful and necessary organ and instrument in the process of petitioning, or whether this was a pretence to cover some other design. This is all we ask, but the attorney-general will not submit to the hazard of such an issue. He calls upon the Court to pronounce *all delegation for public purposes of every kind and degree to be illegal*; and he requires the jury to sanction this doctrine by a general verdict, and intercept the subject's right of appeal. I acknowledge that his attack upon the privilege in this respect, is not confined to Roman Catholics, but that it impartially extends to deprive all his majesty's subjects, here and in England (for it is a declaratory law), of the best mode of exercising their best privilege.

Can this be wise? Can this be safe? Is it wise to suppress the committee and convene the populace? Is it wise to call into activity *aggregating meetings* in every county in Ireland? Is it wise that the people should assemble to discuss every particular of their interesting and complicated case, whenever any doubt or difficulty should arise upon it? Where shall they assemble? What common in Ireland will be sufficient to contain them? Would the Curragh of Kildare be sufficiently ample? Would the Irish secretary wish to hear the chorus of millions of voices urging complaint, and claiming redress? Is this the alternative his majesty's government in Ireland seeks to propose? It may be said, there is another alternative, total abandonment of the pursuit,

silence, despair. Oh, infatuated minister, if such would be the victory of which you would boast! If such would be the tranquillity, which you seek to achieve! To such delusive and foreboding silence, my vulgar taste would prefer the loudest and most discordant clamour. I would rather see the festivity of the Castle interrupted daily by such clamour, than learn that the Roman Catholic body of Ireland, in hopeless despondency, had relinquished the constitutional pursuit of an object so near to their hearts, and in which they are so powerfully aided by the sympathy of their Protestant brethren. This is a victory which the Irish secretary cannot achieve. This is an effect which he cannot produce. The Roman Catholics of Ireland have no other object of pursuit, and therefore they will persevere.

Much has been stated respecting the conduct of the Roman Catholic body, and particularly of lord Fingall, in resisting the law of the land. That high and distinguished man, deserves other and better treatment. The tongue of slander never before assailed him. The slightest imputation was never cast upon his loyalty, until the rude hand of power scribbled a charge of sedition against him, upon the records of this Court; a charge which no grand jury in the land would have found, and which a petit jury will soon obliterate. Imputations have been thrown upon him, because there was not an instant compliance with what was pronounced to be the law, by this Court, upon the former trial. I scarcely think it necessary, to enter into a justification of that noble and loyal personage. His past life, so well known, should have protected him.—His services to his country and his king ought to have been a shield of adamant against such a profanation of his unspotted fame. But, in the name of candour, how does the matter stand?—A proclamation issued, and he did not bow his neck to the mandate of the secretary. His lordship was told by *high legal authorities* in both countries, that the law supported a mode of petitioning which had been exercised for years, his lordship was not bound to believe that a proclamation made law. He had a respect for it, but he sought for an opportunity of ascertaining, whether those who had framed the proclamation, had not mistaken the law, and he would have betrayed, not only his Catholic, but his Protestant brethren, if he had not put the question into a course of temperate investigation. Has he acted intemperately, in the mode of seeking this investigation? We have always been ready to confess the facts upon the record. This was refused by the Crown lawyers. Is it constancy or treason to doubt their infallibility? They forced on the trial of Doctor Sheridan, and the verdict of twelve men found him not guilty. In a case as vital as the present is said to be, that jury have virtually given their opinion; that they would have done the act themselves. But they added, that the evidence was insufficient. Is the whole of my argument gone to that,

for I contend, that believing every thing which the witnesses have said, the evidence is insufficient to establish criminality within the statute. Did the jury say, that they did not believe the witnesses? Will this be contended by the attorney-general, who demands your verdict now upon the same evidence? But the Court had declared the law, and Lord Fingall ought to have submitted. No doubt your lordship upon a single argument, did deliver an opinion upon a question of the first impression and consequence, deeply affecting the rights of the subject, and from which his lordship well knew, that many distinguished men differed. His lordship was advised, that nothing but the high respect which every man must entertain for the opinion of a Court of justice, diminished the confidence which was entertained, that an appellate court would give the law a different construction. Was he bound, under such circumstances, and with a verdict in his favour, to relinquish the people, and their accustomed privileges? Was he not called upon, by his duty to the public, and to the laws themselves, so to act, that it might be decided without tumult or disorder, whether the Castle would submit to the verdict, or, by interrupting the meeting at which he was about to preside, supply him with means, by a bill of exceptions in a civil action, which could not be denied to him, if the court should differ from him of bringing the question before the *demer resort*? He now meets the censure of the attorney-general. But, if he had acted otherwise, he would have encountered and deserved the contempt of his brethren, and the reprobation of posterity. Well—the committee does assemble. That terrific body is encountered and dispersed by a single peace officer. The constable's staff is held in reverence by men, every one of whom believed he was acting illegally. Lord Fingall is taken by the shoulder, he submits to the indignity,—although the petition would have been voted in ten minutes, and the committee dissolved, perhaps never to meet again; there is no resistance or delay, no inflammatory word is uttered. The magic of a constable's staff at once stops every proceeding, and silences every tongue.

But in submitting to this pollution, something is gained—something which the uncandid conduct of the prosecutors, in refusing a special verdict, has perhaps rendered necessary. Lord Fingall has, purchased by the indignity, a right of which he cannot be deprived by power or by influence, of bringing the great question before the *demer resort*.

Much has been said and insinuated against the former jury, with all the want of character in calling and selecting them, though so many respectable men were set aside and affronted, to arrive at the men, upon whom the Castle could rely; still a refractory verdict was found, and you are called upon to stigmatise that verdict, and in effect attack that jury. Gentlemen, if you have the feelings of Irishmen, if you prefer

harmony to discord—if you wish to see the country united and unconquerable, you cannot feel prejudice against that verdict, or any ambition to contrast yourself with that jury.—So salutary, so healing a verdict never was pronounced. It tranquillized the agonized emotions of the country in every quarter. The glad tidings travelled to the extremities of Ireland, with the velocity of sound impelled on the wings of the wind, by the acclamations of joy. In the capital all was harmony and delight.—Kindly affections softened every countenance, and beamed in every eye. Protestant and Roman Catholic met each other in the street like affectionate brothers after a long absence, or a reconciled estrangement. The whole city of Dublin appeared like one happy and united family. A foreigner, ignorant of the language, who should walk the streets, the morning after the verdict was pronounced, could read in the countenances of the people some happy event, some national blessing. He must have the feelings of a demon, who did not enjoy this heart-moving spectacle.

I call upon you to respect that verdict—to respect the laudable pursuit of your fellow-citizens, even though they differ from you in religion—to respect the high privilege of petitioning, which is at hazard—I call upon you, to acquit the traverser, if you believe, as you must believe, that the only pursuit of the Roman Catholics was constitutional emancipation, and that their only motive in forming a committee, was to prepare a petition, and promote its success by peaceable and constitutional means.

If the court shall continue to overrule my argument, and to decide that any species of delegation for public purposes is illegal, and if you feel that you are bound not to differ from the court upon the law; then and in that case, I call upon you to find a special verdict, and to leave it to the Court to draw the conclusion of law, and pronounce the sentence of Guilty. You are told that you cannot understand the law, and have no jurisdiction to pronounce it. Why then should you pronounce it? If you pronounce upon the facts, there can be no failure of justice; the Court, who are the organ of the law, will pronounce the judgment. If judgment be pronounced in this way, your fellow-citizens may appeal; the Catholic body may appeal; you have a right to do this without any consent from the attorney-general—without any consent from any quarter; the Court will tell you that you have. Am I seeking, in urging this, to mislead you? Am I exciting a war of jurisdictions? Manifestly the very contrary: I am struggling to keep the jurisdictions distinct. I do not call upon you, if your consciences at all interfere, to assume to be the organ of the law, but I am expressing a hope, a reliance, that your consciences will interfere in preventing you from becoming instruments of the Castle. You can have no wish, by a general verdict, to

obstruct the avenues to the court of appeal. You ought not to gratify the attorney-general high and respectable as he is, by screening the opinion and advice he has given from constitutional revision, and if they deserve it, animadversion. No delay can arise from thus placing the question in a train of final decision, and the more so, as I am persuaded that punishment is not the object of this prosecution. When the law shall be decided, the Catholics of Ireland will submit, however repugnant such decision may be to their feelings and reason. They have been trained to a patient submission to laws of which no fair man could approve. They never have, as a body, committed any act of violence or intemperance. Even in the pursuit of that constitutional liberty which they idolize; though they have been zealous, they have not been intemperate. But if they had somewhat exceeded; if in the ardor of pursuit, of an object so interesting, they had somewhat transgressed the boundaries of frigid decorum, such feelings ought to be rather hailed as a qualifying indication, than criticised with severity; we ought to apply to them and to their pursuit, the language and sentiment of the Roman Historian — “*Id demum sentio, qui pro libertate tam acriter contenderunt, dignos ease qui Romani fiant.*”

## REPLY.

*Mr. Solicitor General.*—My lords, and gentlemen of the jury; it is now my duty as counsel for the crown, to observe upon that evidence for the prosecution, which has not been contradicted, and upon that defence for the traverser, which has not been supported.

The learned and able advocate for Mr. Kirwan, has left to me, as he always does to those who follow him, much to do; but he must forgive me, if I say, that I feel my duty, upon the present occasion, to be more troublesome than formidable, and that its difficulty consists rather in the variety and inconsistency of the defence which I have to encounter, than in the weight or value of the arguments which he has urged; I find it difficult even to class the topics of his multifarious defence. The law has been re-argued; the facts have been re-disputed; the array has been challenged; points of variance have been insisted upon; the indictment has been said not to be supported in fact; and the crime charged by it, has been justified as innocent in law, and eulogized as meritorious. This is a short summary and faint sketch of those multiform defences which have been attempted against the present prosecution, and which have prolonged a criminal trial, now to the fourth day, a consumption of public time, unprecedented in the legal annals of this country.

I have not taken notice of the irrelevant, and unjustifiable discussion of a political subject in a court of justice, of the unprovoked declamation upon Catholic emancipation, in a place where such a question never can be

decided, and ought never to be agitated. I allude not to those minor ornaments of speech of Mr. Burrowes, so utterly unconnected with the subject upon which you are to decide; his history of a dinner at the Rotunda, and his eulogy upon what he calls that memorable festival; I merely speak of such parts of his speech as may be said to justly belong to this place, and I can discover nothing but a defence incongruous and inconsistent, unable to rest upon any single point, and obliged to sustain itself by spreading over as much ground as it can cover. I wish to set Mr. Burrowes and his colleagues face to face, and call upon them to reconcile his argument of three hours upon the law, with their cross-examinations of *air*, against the *fact*. I wish to know if they dispute his law, or if he questions the sufficiency of their cross-examinations. If it be true, as he has argued, that the law of this case is with the traverser—that, upon a sound construction of the Convention Act, Mr. Kirwan has not been guilty of any offence, and that the facts imputed to him as a crime, constitute his glory; how did it become necessary to put forward the gentlemen who act with Mr. Burrowes, one after another, to bring into doubt those very facts of which his client boasts, and to do so through the medium of cross-examinations, prefix beyond example, wasting the public time, and disgusting the public feeling, by a desperate and abortive attempt to represent the witnesses for the crown as suborned and perjured!—If, on the other hand, those witnesses be suborned and perjured—if all which they have sworn be fabrication and imposture, what has been the necessity for consuming the greater part of a day in controverting the construction of a law, which, upon that supposition, is altogether unnecessary to interpret!—I repeat it, I am at a loss how to meet this many-faced defence, which defies pursuit and eludes contact.

“*Quo teneam vultus mutantem Protea nodo?*”

I wish not to abridge the fair discharge of an advocate's duty, which, I know, calls upon him to resort to every available topic in his client's case, and to omit nothing, however inconsistent, by which he may serve him. But Mr. Burrowes would scorn, upon this occasion, the claim of such a privilege; he has assumed a loftier tone, and certainly no man is more qualified by virtues and by talents, to sustain it. He is not, forsooth, the counsel of any petty client, or brought here to accomplish the impunity of any individual—he claims higher behests than these; he is the advocate of a people's rights—coming boldly forward to meet a great question—he is the champion of a nation's cause!—the liberty of the country is his client. He must forgive me, if I examine those high claims—and if I recall those circumstances of the present trial, upon the recollection of which I expect that he will abandon those borrowed plumes, and lower those towering pretensions. I repeat it, no

man whom I ever knew, is better calculated for the most dignified discharge of the grandest duties—but upon this occasion, he will recollect, that, though he came down with all his force—though his advance in column was magnificent and imposing—he has not disdained much of that skirmishing and petty warfare which rather bespeaks the partisan, than suits with his higher character. Has he yet forgiven his client for putting him forward in the challenge of the array?—that desperate experiment to represent to an irritated people, the government of the country as corrupting the administration of justice?—Does he forget, that he was for a moment imposed upon to believe, and employed to make the triers and the court believe, that preposterous paradox which common sense repudiates, and which nothing but metaphysics could sustain, that, because sir Charles Sexton had obtained a copy of the panel after it was formed, he therefore, of necessity, was a party in the formation of it.—Does he forget the issue of that unjustifiable charge, and the solemn verdict of the triers upon it—when it appeared that no other advantage was obtained by the crown, except an opportunity to prepare challenges to the jurors, by seeing a copy of the panel after it was formed?—That, upon farther inquiry, it appeared, that there was in this no superiority over the traverser, for that his own attorney had the very same advantage; and that the crown might, with equal justice and truth, have challenged the array, for having been framed by Mr. Kildhall, as Mr. Kirwan's counsel had challenged it, for having been framed by the crown solicitor?—Does Mr. Burrowes forget, or forgive the farther aggression of his client, who, after making him the dupe of this attempted imposition, put him forward on the following day, to state a rash, audacious, and intemperate affidavit, in which that unfortunate man had the presumption, upon his oath, to re-allege that slanderous charge upon the subject of the panel, which, upon the former evening, had been refuted and condemned by the solemn verdict of the triers, and the reprobation of the Court; and in which, a new slander was introduced, aspersing the integrity, and defaming the character of the honourable foreman of that jury, and the other gentlemen impanelled with him;—a slander consisting of a variety of charges, all of which, Mr. Kirwan swears he had reason to believe, and expected to be able to prove—all of which, upon investigation, turned out to be utterly unfounded and insupportable?—I mean not to assert, and I am most unwilling to believe, that Mr. Kirwan fabricated those base charges, or wished to impose them upon the Court, knowing them to be false—on the contrary, I have no doubt that he was persuaded of their truth. It is the pitiable condition of faction to be credulous—there is something about it, which distorts the judgment, and perverts the mind; no man under its influence, sees fairly,

or thinks directly; it is even less distinguished by its passion for misrepresentation, than by the voracious credulity with which it swallows every thing which is false. How otherwise can I account for it, that a man, in the rank of a gentleman, should desperately hazard the false and shameful assertions which fill that affidavit which the Court has declared ought not to pollute its files?

Another instance of the smaller game, which Mr. Burrowes has not thought it beneath him to play upon this occasion, is the insidious offer of a special verdict, and the clamorous appeal to the counsel for the crown to put the law of the Convention act into a shape for decision by the *dernier resort*. My lords, this appeal could neither be intended for you—nor for the jury;—it is calculated for the public—and in the face of the public will I expose it. What is the meaning of calling for a special verdict but to imply a doubt upon the law?—What is the reason, upon the former trial, before the law was announced by the unanimous opinion of the Court—while it was supposed to be in doubt—and while the opinion of one counsel conflicted with the opinion of another—that no such proposition was made? Why did not Mr. Burrowes then come forward, and why has he deferred this demand, until the Court of King's Bench had pronounced a deliberate opinion upon a solemn argument?—Does he expect that the king's attorney-general and myself will compromise our offices and betray the constitution of our country, by implying, in a consent for a special verdict, that the Court of King's Bench is not an authority upon the criminal law?—That we shall sanction the presumptuous slanders of a factious press—which daily arraign the competence and question the authority of the first legal tribunal in the land?—He is much mistaken if he thinks so:—I ask him again, why did he not offer this upon the trial of Dr. Sheridan?—I will not suppose a reason unworthy of him and of the former jury—I will not suppose that he declined to make such a proposal from a confident expectation of a general verdict from that particular panel—I will not be seduced by his example into the insinuation of any thing unworthy against honourable men. I believe those gentlemen to have been as honourable and as worthy men as those whom I now address. I believe their verdict to have been found upon pure and conscientious motives—I respect them for not having presumed to wrest the law from the Court, and for having assigned the insufficiency of the evidence as the cause of their verdict.—Whether they were right in such an opinion or not, it is not for me to determine. I cannot but respect those gentlemen, and I am sure that you respect them too—but their verdict, gentlemen of the jury, though it may influence must not govern you. You are sworn upon *your* oaths, not upon *theirs*—you are to consult *your* judgments, not *theirs*—you are to lie down on your own pillows, and you are to answer to your God, not

upon their consciences but your own. I am satisfied that they are all honourable men; I know many of them to be so. I wish that Mr. Burrowes had done equal justice, and shown equal candour to the jury whom I now address.—I wish that he had not, by an unworthy sarcasm, revived the refuted slanders of the challenge to the array, and of Mr. Kirwan's affidavit.—I wish that he had not told you that he would not give you the trouble of deciding upon the facts; but would treat you to a point of law, with which he would not compliment your predecessors.—I own, that it gave my heart a pang to hear an honourable and generous man go back to a confuted defamation—and to rally the discomfited and disgraced assault which had been made upon the fairness of the sheriff's panel, and the characters of the individual jurors:—if I thought that this had moved from his own heart, I should wish to expunge from my recollection something so unworthy of that pure source: but I attribute it not to him but to his client—to those instructions which, in a desperate and factious case, call upon him to struggle for a verdict, however to be obtained; and I remind him, triumphantly, of all those facts, that he may learn from them, the true nature of the service in which he is now engaged; that he may undeceive himself as to the magnanimous character with which he conceives himself to be invested—that he may recall the other circumstances of the trial to his recollection—that he may remember the points of variance and special pleading, upon which the *geography of St. Mary's parish* was called in aid of the *liberties of Ireland*:—That he may admit, that if his defence has been, as it certainly has been, brilliant and splendid—its course has been attended by some satellites, which, like other satellites, have not a little eclipsed its lustre—and that if his client be a nation—and if his cause be a people's rights—he has defended them in no other manner than he would have defended a thief at the Old Bailey.

In this manifold defence, the first topic to which I shall advert is, Mr. Burrowes's repetition of his former argument upon the law of the Convention act.—Much as I admire the talent and ingenuity which he has displayed, I must be permitted to say, that he has not, upon the present occasion, argued with more force than upon the former; and unless he has argued with more effect, I shall not conceive myself called upon, or indeed authorized—to discuss, a second time, as a matter of legal argument, that upon which the Court has most solemnly decided: and therefore, unless I shall hear from your lordships, that doubts have been excited by Mr. Burrowes, as to the propriety of your former determination, I shall certainly abstain from any farther reasoning, which might seem to imply my doubts of the soundness of your decision, and shall not compromise the deference which I think every professional man owes to the judgment of a court of justice, by bringing its authority into question.

Mr. Justice Day.—I remain unshaken in my former opinion, and I am the more persuaded of that being the right construction of the act, from the observations which I have since heard in opposition to it.

Mr. Solicitor General.—My lords, the attorney-general and myself, were most happy to find that your lordships had permitted Mr. Burrowes a second time to discuss this question, and not only did not object to such a proceeding, but rejoiced that a farther opportunity should be offered, of weighing the value of those arguments which he might wish to advance:—but now that your lordships have again declared your deliberate and solemn opinion, I shall not think myself at liberty to do more than to announce it as the fixed and settled law of the land.—I trust that such an adjudication will open the eyes even of those who are determined to be blind upon this subject.—I trust that no one will now hold the alarming language, or promulgate the formidable doctrine, that the criminal law is unsettled, because *only* the Court of King's Bench has pronounced upon it, and that the subjects of this realm are at liberty to go on in experimental and intermediate violation of that law, until, mayhap, the House of Lords may be called upon to decide upon it. Upon a former occasion, I stated my opinion upon this statute with reserve and diffidence; although I was supported in it by the profoundest lawyer and one of the wisest men who lives. I could not be over confident, even in this opinion, when I knew that learned and able men had differed from us; but now, I am warranted to assume another tone—I am not now to argue in support of my own fallible construction, but to announce and insist upon the highest authority, which I recognise in this land:—as long as the constituted and lawful authorities of this land are suffered to exist, so long the criminal law of the country is attested in the most unequivocal manner when pronounced by the Court of King's Bench; and so long as that adjudication stands unreversed; it is emphatically the law, and let him who hears it so announce disobey it at his peril. Let no man entertain the visionary and frantic notion, that this law, so pronounced, lies in abeyance, because perhaps upon some future occasion it may be brought under the consideration of the *demer-reort*—that in the mean time, the king's subjects are absolved from the obligation of obeying it; and that the opinion of council is to supersede the authority of the judges, and (what the king cannot do) dispense with the law of the country: the proposition for which we contended, and which I understand your lordships to have now established, I shall broadly and frankly state.—That all assemblies of representatives or delegates, returned by election, which assume to represent the people or any portion of the people, are unlawful assemblies, although the sole purpose of such representation or delegation be to petition par-

liament, if the object of such assembly be by such petition, or otherwise, to procure an alteration of matters established by law in church or state—that such assemblies may be dispersed by the magistracy, and that all who concur in the election of members to such assemblies are guilty of a misdemeanor.

Although I feel myself precluded from any argument in support of your lordships declared opinion, I trust that I may stand excused, if I shall make one observation suggested by Mr. Burrowes's mode of treating the subject yesterday; the principal difference between his late and his former speech is, that originally he struggled for the restrained construction of the word *pretence*, and insisted that it must be construed, as *false pretence*; and yesterday, he urged that topicless strenuously, but contended for a distinction, which in his former argument, he put less forcibly between general representation and delegation for a particular purpose, admitting that general representation is criminal, but alleging, that delegation for a particular purpose is not so: let me suggest to his accurate and candid mind, that this is nothing, but a shoot and offspring from his parent-sophism upon the meaning of the word *pretence* and must abide its fate. If *pretence* means as we contend, *purpose*, whether real or feigned, then the statute must be read, as if the word were *purpose*, and then the enactment must be the very thing which he controverts, namely that a delegation for the purpose of petitioning for an alteration of matters established by law, is an illegal assembly: and this necessary conclusion will not be at all affected by his remaining argument, grounded upon the proviso in the statute; because if the object of the act be such as I have stated, then the proviso can never be construed to destroy the whole enactment, and to render the statute negatory by repealing every thing contained in it. The construction of the statute, and the proviso must therefore, be thus reconciled. The latter must be considered, as declaring the general right of petitioning to be unimpaired, and the former to restrain the exercise of that right, through the medium of delegation.

From some passages in Mr. Burrowes's speech, I should be induced to suppose, that he did not so much dispute your lordships judgment, as he disclaims your jurisdiction, and that he considers your lordships to have arrogated the province of the jury, in the interpretation of this statute: I did not expect, that I should have heard it gravely asserted by his lips, that the jury were the proper tribunal for the interpretation of the statute law: I shall never until corrected by the highest authority, cease to consider, and to call this the most monstrous proposition that ever shocked a legal mind. I know, that for disputing this alarming and popular novelty, I have incurred much obloquy from what Mr. Burrowes calls the censorial power of the people, and have been represented as the advocate of arbitrary doctrine; but that shall never intimidate me

into a concession of the first principles of my profession, and an abandonment of the elementary maxims of the constitution. I never, until I shall be taught my error by some higher authority than the newspapers, will hear with patience, or treat without apprehension, the assertion, that according to the British jurisprudence, acts of parliament are to be interpreted by juries. If Mr. Burrowes asserts that proposition, and is right, I am grievously ignorant; but I grapple with him upon the question, and am not afraid of the result. Where does he find this position stated? in what legal authority has he discovered it? he may find the rules for the construction of statutes elaborately discussed, and minutely distinguished, in our most authentic books, and that nice and difficult part of our science reduced to precision; and he has learned, where your lordships have learned, how to apply those rules. But, gentlemen of the jury, when and where have you studied them? what has been your preparation for the judicial office? are you apprised of all the distinctions between statutes penal, and remedial, and of the different views which may be taken of each? Is it not, my lords, to be lamented, that at this time of day, we are without any recorded adjudication by juries upon the statute law? Is it not to be lamented, that if it be their province to decide the law, yet that the law has been so perverse, as not to provide for its own uniformity; and that the adjudication of one jury upon a statute, is not to be an authority to govern another, but that there may in fact be as many laws as there are juries? Mr. Burrowes has much perverted the libel act, which he has thought it necessary to read to the jury, in order to persuade them, that they must interpret the Convention act: does that act provide that juries are to decide questions of law? certainly not. Had that been the case, the legislature would at once have so enacted. Before that statute, the judges had claimed, as questions of law, the decision upon two matters, which are in their nature more properly questions of fact. They had insisted, that in libel cases, the jury should merely decide upon the fact of publishing, but that the motive of the publisher was immaterial, and that the tendency of the libel to produce the effects, or convey the meaning imputed to it, was matter of law; and only to be interpreted by the bench. In this, the legislature has corrected them; and juries now, in cases of libel, are to judge of the motive, and the tendency, as well as of the publication of the libel. But does it follow, that because the statute, which is a declaratory one, has declared, that such was always the fair province of the jury, and that there were in reality, questions of fact, that juries are in all cases to pronounce upon *all* law, and to interpret *all* statutes? that because each jury is to pronounce upon the tendency of each ephemeral and fugacious libel; therefore, every successive jury is to form part of a move-



able and shifting tribunal, to construe in infinite varieties, the fixed and immovable laws of the land? Surely, such an illogical conclusion was never before offered to the human understanding.

I was not less surprised to find Mr. Burrowes claiming this privilege for you, gentlemen of the jury, upon your right to find a general verdict in a criminal case, and arguing seriously, that because a jury finds a general verdict, it decides the law. I did not think that it could be necessary to suggest to his very discriminating mind, the most obvious and common-place distinctions. Does he not know, that when the jury find a general verdict, they apply the law, which they hear from the bench, to the facts which they decide upon their oaths, and do not decide the law? Let me remind him of the too common case of murder; a man is indicted for that crime, and his guilt or innocence depends upon those shadowy distinctions, which distinguish it from manslaughter: the judge tells the jury the legal distinctions between the several classes of homicide, and tells them (we will suppose one familiar case), that if they believe that the killing was sudden, before the blood, heated by adequate provocation, had time to cool, they ought to find a verdict of manslaughter, if otherwise, of murder. They find a verdict of one or the other. Does any legal, or indeed any rational man, suppose, that by doing so, they pronounce or decide the law of manslaughter and murder? Certainly not. If they did, that law would fluctuate with every homicide, and change with every jury. They merely decide by their verdict, the facts, upon the hypothesis of which the one way or the other, the law depends, and apply the law to those facts. If I shall be told, that they may misapply that law, and believing the facts which constitute the crime, acquit; or disbelieving them, convict; I answer, that if they do so, they violate the law and do not decide it; that they exercise the power, which unfortunately all men possess, of doing what is wrong; but do not establish a right to do so. I am ashamed, that it should be necessary to argue such a set of first principles in a court of justice. The mere censure to which I have been exposed for my opinions, and the charge of introducing arbitrary doctrines, of which I should blush to be guilty, would not be a sufficient apology for my seriously treating such a question: it is the sanction which the high authority of Mr. Burrowes's name, must give to the popular delusion, which must be my justification. I request that this argument of his may be compared with the pompous offer of a special verdict, so clamorously reiterated in this trial, and let me exhibit him as answering himself: what is the result of a special verdict? The determination of the judges upon the law! If they are wrong, the opinion of the court of error, which in this country, consists of the twelve judges is resorted to. If they err, the correction of their opinion by

the Court of final judicature follows. What is the meaning of all this decision and re-decision, by judges upon judges, if his latter argument be well founded, that juries alone are to decide upon the law.

Suppose a special verdict found according to his last argument; we all know, that a jury can find nothing by a general verdict which they may not detail in a special one. Now, by his argument, their general verdict may pronounce upon the law, and interpret the statute, and then the special verdict for which he has clamoured, would exhibit a legal monster; a finding upon the law. But go a step farther, and see what his special verdict would be, if you combine his argument with the cross-examination of his colleagues. They strenuously dispute all the facts of the case, and then his special verdict would negative the facts, and assert the law. Compare again, gentlemen of the jury, his call for a special verdict, and his argument for your judicial authority, with his challenge to the array, and his client's affidavit against you individually; and the result will be, that Mr. Kirwan objects to you as unworthy to try any fact, and Mr. Burrowes insists that you are infallible in the interpretation of the law!

I must now, gentlemen of the jury, request your attention to those facts, and that evidence upon which Mr. Burrowes has scarcely condescended to remark; but which his colleagues have laboriously struggled to impeach. Before I allude to the testimony of any one of the witnesses, let me repeat an observation, common to them all, which I urged upon a former occasion; three persons have solemnly deposed in a court of justice to the facts which constitute the crime, of which Mr. Kirwan stands accused: no imaginable motive can be assigned for their committing wilful and deliberate perjury, no witness has been produced to impeach the moral character of any one of them, or to represent him as unworthy of credit. The facts to which they have deposed, have been impliedly admitted to be true, by almost every word of Mr. Burrowes's speech, which has been a *justification* of his client, and not a *denial* of the conduct imputed to him. These facts are, from their nature, capable of contradiction by hundreds of persons, and not one person has been produced to contradict any one statement made by the witnesses for the crown: I borrow, then, the strong expression of the attorney-general, and I ask you, whether it is not an insult to the understandings of the jury, to call upon you, upon your oaths, to convict three men of deliberate perjury who swear to what the leading counsel for Mr. Kirwan is instructed not to deny, but to boast of, because his other counsel have been desired to treat, as fabulous, every thing which he has gloried in as meritorious? Apply this reasoning to the evidences of Mr. Huddleston, that gentleman has a second time been treated with great asperity, his private history, his mistresses, nay, his religious opinions have been

all scrutinized in a severe cross-examination; he has been called upon to account in a court of justice for his having abjured the Roman Catholic faith, and nothing calculated to excite disgust and prejudice against him in these terrible times has been omitted. I am sure, if it had been necessary to investigate the nature of his religious belief, and discuss the comparative merits of his former and his present tenets, he could not have fallen into the hands of a more profound and accomplished divine than my learned friend Mr. Gould; and that the public could not fail to be highly edified by his lectures in divinity. But much as I respect his high erudition, and his intimate acquaintance with the fathers, with Thomas Aquinas, and Thomas a Kempis, and the whole *Corpus juris canonici*, he must excuse me, if I presume to doubt the relevancy of so much learning, so uselessly displayed; and if I ask him of what avail it is to his client, to know that Mr. Huddleston is not so good an ecclesiastic as himself? If he supposes, that by such a cross-examination, he discredits Mr. Huddleston, let me remind him of what Mr. Huddleston has sworn, and let me ask him, is he instructed, seriously, to persuade you, gentlemen of the jury, that what he has sworn is a fabricated tale, a mere invention of the government, suggested by subornation, supported by perjury? Mr. Huddleston is sworn to nothing whatsoever, but that on the 9th of July, 1811, lord Fingall presided at an aggregate meeting (numerously attended) in this city in Fishamble-street theatre; at which certain resolutions were passed, which have been since published in the newspapers with lord Fingall's title of honour subscribed to them. Mr. Huddleston has stated the names of several gentlemen now in this court, who attended and acted in that meeting. If it is not true, that such a meeting ever took place, or if Mr. Huddleston has misrepresented what occurred at it, why have none of these gentlemen been produced to contradict him, and why are you left to the hazard of inferring a discredit from a cross-examination as to religion? Why has not lord Fingall himself been produced? I have the honour to see that noble person now before me, and he must excuse me, if I observe upon the extraordinary, and afflictive situation in which the defence of this prosecution has placed him; I shall say nothing inconsistent with that high respect for his character, which I unfeignedly feel, and which I shall not be restrained from pressing by the only thing which could remain me, his presence: I know his private worth and his public spirit; I have not the slightest doubt of his meaning well, and being trusted by pure and honorable motives in that he has done: though he must allow me to say, that I consider him as an instrument in the hands of others, as grievously staked, and as acting under a gross delusion: but he must permit me to express what I feel for his situation, and for the trial to

which his noble heart has been exposed; when I see him now a second time condemned to sit by in a court of justice, and listen to advocates hired to deny within those walls, that cabinet and those acts which he has been taught out of this court, to glory in as patriotic and meritorious; which he has sanctioned by his presence and authority, and to the public avowed of which his title of honour stands pledged in every newspaper in the empire.

Gentlemen of the jury, I say as long as lord Fingall sits silent in this court, it is an idle waste of time to cross-examine Mr. Huddleston: it is useless, if it were possible to represent him as infidel or infamous. My lord Fingall sits there his compurgator; his silence sets him up and supports his testimony, even if it were otherwise exceptionable; and upon that testimony, I shall not affront your feelings and your intellects, by making another observation.

But let me turn again to my learned friend Mr. Burrowes, and ask him in this part of his case, how he has supported his claims to a national defence, and to a public cause; let me remind him that it is now seven or eight months since the government of the country has been at issue with his client upon the one single question; whether a committee to be convened under lord Fingall's proclamation (for such I must call it) of the resolutions of the 6th of July, be lawful or not, and that up to this hour, no man in any place, has been candid or fair enough to admit those resolutions. I know what evasive circumlocutions may be contrived as substitutes for this simple admission. I can suppose the noble lord to be taught to say in answer to any question, "that he is engaged in a lawful and constitutional pursuit;" but I know, that up to this hour, that meeting, and those resolutions, have never been admitted, and that the allegation of their existence has only been encountered by a cross-examination into Mr. Huddleston's religious opinions. I call, therefore, again upon Mr. Burrowes, to weigh well his pretensions to the manly and dignified advocacy of a great national question. I call upon him to lower his tone, I say to him, Descend from your iambs,

"Proice ampullis et sesquipedalia verba."

I come next to the evidence of John Shephard; and shall, in the first place, observe, that the gentleman who cross-examined him, must have considered his testimony as highly injurious to his client, if believed, or he never would have taken so much pains to discredit it. Upon the minute details of it, it is quite unnecessary that I should descend; I defend it, in abstract, by this general observation, that he has stated the occurrences of the 31st of July, in Liffey-street chapel, to have occurred in the presence of great multitudes, and has named several persons, all present during this trial, as having acted in the election of that day, not one of whom has been produced.

to contradict him. One of those gentlemen sat in the gallery while he gave his testimony: I mean Dr. Sheridan, the person alleged to have been most active in the proceedings, and a person whose production could not have subjected him to any risk, for he is now an *acquitted delegate*; he is a gentleman of profession and character; and if Shepherd either swore falsely or inaccurately, could easily have contradicted him: a different line of impeachment, however, was adopted with this witness, and as no one else would contradict him, an experiment was made to make him contradict himself; whether that experiment was successful or not, I frankly own that I am unable to assert. I should rather suppose that it has failed, because Mr. Burrowes, in his address to you, made no observations upon his evidence, nor did he pretend that he had contradicted himself.—Let it not, however, be supposed, that I pledge myself for his not having done so: you, gentlemen, must judge for yourselves, as to the effects of his cross-examination; and if you are able to form any opinion upon it, your heads and mine must be made of very different materials. My learned friend, Mr. Burne, must not suppose me to insinuate, that his discharge of that duty was unnecessary or prolix; he must permit me, however, to say, that it was somewhat prolonged. No one discharges his professional duty with more ability and effect than he does, but he will remember, (I am sure I shall never forget it,) that he cross-examined John Shepherd, for three hours and a half by Shrewsbury clock: there are limits to the human faculties, and I must confess that at last, mine were so exhausted by this process, that I was unable to carry away a definite idea, or even a distinct sentence: the victim on the table at last swam before my eyes, and some confused buzzing sounds like the repetition of a catch word in the examination; notes, drafts, copies, informations, &c. &c. rung discordantly in my dizzy head, and tingled in my ears. Gentlemen, if such were the effects produced upon a mere suffering auditor, what must have been the sensations of the witness himself? And let me ask you, if the man had fallen into contradictions, and inconsistencies who could have been surprised at it? Who has sufficient confidence in his own memory or nerves, in his own strength of body or of mind, to suppose that he could come out from such an ordeal, more than alive? Let me put it to the candour of my learned and ingenious friend, Mr. Burne, how does he suppose that he would have endured such a “*peine forte et dure*” himself? Let him imagine himself nailed to that chair, and that chair fastened to that table, and another Mr. Burne, if another could be procured, sitting down in regular assault before him, and for three hours and a half, battering and beleaguering him like a besieged town? Let me ask him how he thinks he would feel about the time that his adversary

became tired of the attack? Really, gentlemen, nothing is so unfair, as to judge rashly of a man's credit, who has been exposed to such a trial. I will not say, that the witness did not sink in the contest; though I cannot say that he did; but of this I am sure, that if after so many rounds he had given in, the mere length of the combat would account for the victory. We know, that many a woman has had to complain of violation, who neither yielded to her passions, or was overpowered by force; but who has been worn out by the fatigue of resistance, and subdued by perseverance; whose lover has succeeded neither by his beauty or prowess, but because he was indefatigable. Such a swain is irresistible.

But, gentlemen of the jury, jests apart, what is the fair influence of such a proceeding upon your minds, and how are men, acting upon their oaths, to treat such an affront to their understandings? You have heard also the third witness, M'Donogh, cross-examined by Mr. Barton, without stint, and with the same effect. Mr. Burrowes has not in his speech insinuated, that he was entrapped into a single contradiction; but if he had, what a faint and fallacious gleam would such a contradiction have offered, to mislead you, and would you allow yourselves to be directed by it, at the desire of those who had an opportunity of pouring in full and unequivocal daylight upon every thing doubtful, and who have refused to do so? When, therefore, they loudly demand your verdict in contradiction to the witnesses whom we have produced, let me silence the call, by pointing out to them lord Fingall, and Mr. Hay, and Dr. Burke, and Dr. Sheridan, and all those many persons, who could have contradicted every particle of the Crown's case, and whom they have not dared to bring forward. It was in the consciousness of this weakness, that Mr. Burrowes has called upon you for a finding, not to be built upon your disbelief of the evidence, but upon your opinion of the political influence of your verdict. He has called upon you for a *healing* verdict, and has told you that the last verdict was *most healing*. I shall never hear without reprobation, such a call upon a jury: I trust, that no such dreadful precedent may be established, as the finding of popular and political verdicts. If the public mind requires to be healed, I trust that the consciences of jurors may never be bruised into a nostrum for the purpose; that jurors may never turn state empirics, and fancy, that they are prescribing for the distempered commonwealth; that they are politicians and not jurors, and that they are at liberty to perjure themselves, for the good of their country. No verdict can be righteous, which is not founded upon the evidence; and the public weal can never be advanced by frustrating the administration of justice. In the name of God, if you disbelieve the evidence which you have heard; nay, if you reasonably doubt it, acquit Mr. Kirwan; if you do not, fabricate not doubts for your-

selves, which no fair mind or sound head can sanction, merely to achieve what you may think a public good. Take the *law* from the Court, and for the *fact*, consult your understandings and your consciences; but compromise not your oaths, and trifle not with your solemn duty.

Gentlemen, the law and the fact of this case were not sufficient for those advocates of public liberty, who defend Mr. Kirwan: they considered their defence incomplete, unless they attempted to non-suit the crown, if I may say so, and they have accordingly relied upon two points of variance between the indictment and the evidence, upon which it becomes my duty to address their lordships. Those points were suggested yesterday by Mr. Perrin's ingenuity, and if for a moment, they appeared embarrassing to the Court, and deserving of a serious answer, every one who heard him must attribute it to the able, and eloquent, and lawyer-like argument, by which he supported, what, I think upon inquiry, it will be found even he has failed to establish. The first point is, that the indictment states the resolutions of the 9th of July, in a manner differing from the testimony of Mr. Huddleston, applied to that allegation. The indictment states, that a resolution was carried upon that occasion, that a committee of Roman Catholics should be appointed, to cause petitions to be presented to parliament, for the repeal of the penal laws, and to *procure signatures thereto in all parts of Ireland*; and that such committee should consist of the Catholic peers, and their eldest sons, of the Catholic prelates and baronets, and of ten delegates from every county, and five from every parish in Dublin. Mr. Huddleston's evidence supports this indictment in all particulars, except in that part of the resolution which relates to the *procuring signatures to the petition in all parts of Ireland*; upon that he has been silent, and it is alleged, that this is a fatal variance between the indictment and the evidence.

In the first place, my lords, the transactions and resolutions of the 9th of July, form no part of the offence imputed to Mr. Kirwan by this indictment. He is charged with having acted in an election on the 31st of July, and the resolutions of the 9th of July, are merely stated, as introductory matter to that charge, in order to show that the election in which he acted, was an election for delegates to sit in such a committee as is described in the former resolutions, that is, a committee to procure, by means of petitions, a repeal of the penal laws. That election is the crime prohibited by the act, and charged by the indictment, and if every thing necessary to constitute that offence, if the *corpus delicti* be all well charged in the pleading, and supported by the evidence, it is impossible to say, that there has been any variance, merely because something not necessary to the constitution of the offence has been stated as inducement in the indictment, and not supported by the evidence. For instance,

if the indictment had alleged, in the introductory part of it, that one of the resolutions was, that the committee should make preparations for a certain festival to be afterwards given, and that the witness had not proved it, no one would argue, that there was a variance: because the preparing of such a festival is not essential to the offence prohibited by the statute, and charged by the indictment. In the same manner, procuring signatures to the petition, which is the passage omitted by Mr. Huddleston, is no part of the offence charged, nor at all necessary to it, and as every thing substantially necessary to it has been proved, as laid, it cannot be held that there is a variance.

In indictments for murder, the offence must be proved substantially and not minutely; and an indictment, alleging that A. gave the mortal wound, and that B. and C. were aiding and abetting, is supported by proving that C. gave the wound, and that A. and B. were aiding and abetting. These indictments often state one kind of weapon and its value, and the evidence is frequently of a different weapon, without any proof of value, and yet such indictments are well supported. The true test is, whether the substance of the offence as charged, has been proved.

The second variance insisted upon, is, that the indictment charges, that the election at which Mr. Kirwan assisted, was for a district in the city of Dublin, called St. Mary's parish, and that it appears upon the evidence, that part of that parish is in the county of Dublin, inasmuch as the Catholic parish of St. Mary comprehends three Protestant parishes, one of which (St. George's) is partly in the county of Dublin. This objection was argued, as the indictment had alleged, that the parish of St. Mary was in the city of Dublin; and if that had been the case, the evidence would certainly have appeared inconsistent with it. But your lordships will observe, that there is no such allegation in the indictment, which merely alleges that the *district* for which the election was held, is in the city of Dublin, and that such district is commonly called St. Mary's parish. Now it is perfectly consistent that the district for which the election was held should be *all* in the city of Dublin, and should be called St. Mary's parish, and yet that St. Mary's parish should not only comprehend *all* that district, but also extend to part of another in the county of Dublin; and it would not follow, that such district was the less in the city, or the less to be called St. Mary's parish, because St. Mary's parish extended beyond that district. There is a street in this town, one side of which is in the city, and the other is in the county of Dublin. If I should say, that a certain man lived in the city of Dublin, in a place called Great Britain-street, my assertion would not be false because the other side of the street is in the *county*: his residence is not the less in the city, because his opposite neighbour resides in the *county*; and because

Great Britain-street is a native common to both their residences: in truth, this is rather a question for the jury upon the fact, than a variance between the proof and pleading.

If the jury should conceive the witness to have sworn, impliedly, that the election was partly for the *county* of Dublin, then the indictment which alleges it to have been an election for a *city* district might be said to be falsified, but no such construction can be given to the evidence—

*Lord Chief Justice.*—We shall take care that this point be reserved for the opinion of the judges, in case of a verdict against the traverser, and for that purpose we must get from the jury a decision upon the fact, whether the election in Liffey-street was confined to the representation of the inhabitants within the city, or embraced the whole extent of the parish, part of which is in the county.

*Mr. Solicitor General.*—In that view of the case, see my lords and you, gentlemen of the jury, what are the facts:—The election in Liffey-street chapel, on the 31st of July, takes place in consequence of the resolutions of lord Fingall's meeting on the 9th of the same month. That fact would not be disputed any where but in this court, and there has been abundant evidence of it. There is but an interval of twenty-two days between the two meetings. The election takes place in this city, is declared to be for a parish, and the exact number of delegates is returned, which lord Fingall's resolutions required to be returned for a *parish* in Dublin. The persons concurring in the election, speak of a proclamation which had that day issued from the Castle; and that proclamation is in proof, and refers to the resolutions of lord Fingall's aggregate meeting. Now, in those resolutions the Catholics are called upon to return *ten* delegates for every *county*, and *five* for every *parish* in this city; and how can it be supposed, that a parochial meeting in the city of Dublin, which elects *five* members, and no more, could have had it in contemplation to return any of those members for the county, the inhabitants of which, if they acted in obedience to those resolutions, must have elected *ten* to represent themselves? Will Mr. Kirwan's counsel demonstrate, that he has not violated the law of the land, by showing that he has disobeyed the proclamation of lord Fingall, and that the election in Liffey-street was so stupidly managed, that, contrary to the mandates of that proclamation, the county of Dublin were to have two sets of representatives conflicting with each other?

But upon what is this alleged variance made to rest? Upon the cross-examination of Mr. Shepherd, saving upon his belief and hearsay, that he understands that part of St. Mary's Catholic parish, comprehends the parish of St. George. No witness has been produced to prove the fact positively; and if there had, has any witness been produced to prove for

what district the election was intended? I ask again, as in another part of the case, why have not Dr. Sheridan, and Dr. Burke been produced? They might have sworn, that the election was partly for the county; they might account for the disobedience of lord Fingall's resolutions, as intentional or accidental, they might have told you, that they did not intend to pursue them, and did intend to elect *city* delegates for the county, although the county was to have elected members for itself; or they might have asserted, that they blundered the election, and in point of fact made a return different from that which was required from them, or that which they wished to make. But in the absence of any such testimony, are you gentlemen of the jury, to presume in favour of Mr. Kirwan, that he and his friends were acting in direct contradiction to their own professed objects, and acquit him by implication, of having transgressed the law, by convicting him of having frustrated his own most deliberate intentions?

Mr. Barrower has laboured to awaken your jealousy, by calling the present prosecution an arbitrary attack upon the subject's right of petitioning, and he has represented the king's government as having declared war against the constitution of the country. He is never more eloquent, than when inspired by those ardent and virtuous feelings, which animate his zeal for the constitutional and free principles, which I know to be dear to his heart; I must appeal, however to his cooler mind, and ask him, if the law of the country prohibits petitioning by delegation, whether those that enforce that law can be justly held up to public odium, as having taken up arms against the constitution? And I would further ask any man of plain, unsophisticated understanding, uncorrupted by refinement, whether he seriously believes, that such an assembly as lord Fingall's resolutions of the 9th of July have announced to the public, be in reality a mere, and a fair proceeding in the exercise of the right to petition: I would ask him, whether an assembly, consisting of between six and seven hundred persons (for I believe the attorney-general has much under-rated their numbers), comprehending all the orders of the Roman Catholic people, partly self-appointed, partly returned by all who may choose to return them, collected in a theatre, with open galleries, for the admission of mobs and note-takers, sitting as long as they please, from day to day, and month to month, under no man's controul, subject to no discipline; debating publicly all descriptions of topics, and circulating those debates over the empire, by the means of a licentious press, be in reality an association, for the purpose of exercising the legitimate right of petitioning the parliament? I rely not at this moment, upon the uncontradicted testimony of the witnesses for the crown, that the members returned to this committee were to manage the other affairs of the Catholics, as well as conduct their petition

to parliament; but I put it generally to every man's common sense, whether the very formation of the assembly bears any resemblance to the mere exercise of the right of petition? whether any man can believe that such a society would stop there? and whether any established government could be justified in permitting such a committee to exist, if the laws of the land were sufficient to suppress it?

Mr. Burrows is obliged to admit, that whatever description of assembly the Convention act prohibits, is in its origin unlawful: he has conceded that the Catholic committee might, by its conduct, fall within the Convention act; and thus has been compelled to argue (and he must allow me to say, he has argued feebly), that it is upon its subsequent conduct that its illegality must depend, and has exposed himself to all those inconsistencies which on a former occasion were pointed out, and which result from admitting that an assembly may be illegal in its inception, that the magistrate may immediately dispense it as such; that any man taking the smallest part in the formation of it, even advertising an election for it, is guilty of a misdemeanor, although the assembly should never meet; and yet that its subsequent demeanor is alone to decide on its unlawfulness: I shall not repeat what I formerly said of the dangerous nature of such associations, and of the policy of that law which being founded on their probable mischief, strikes at their original formation; but I ask, who can answer for the duration of such an assembly as the Catholic committee?

Mr. Burrows has been instructed, upon this occasion, to bespeak the favour of the jury, by insinuating, that if government had not rudely interfered with their meeting, they would themselves have dissolved in a moment, after voting their petition, and have died a suicide death in five minutes after assembling. This was no bad topic in a defence which rejects nothing; but in hinting such a result to you was Mr. Burrows obeying his instructions, or speaking from his experience? Is such his recollection of the sittings of the Catholic committee? Was he aware that he would be called upon to reconcile such a suggestion with a very different description of the Catholic committee upon the former trial? when in one of the most eloquent passages of the most eloquent speech, he not merely argued upon the necessity for such a committee perpetually existing,—not merely asserted that the Catholics never had been without such a committee for half a century, but described in glowing language the comprehensive duties of such a convention, assembled for the purpose of keeping up a perpetual appeal to public opinion, watching the course of public events, shewing prejudices, obviating difficulties, hovering, if I may say so, over the Catholic interests with permanent superintendence, riding in the whirlwind, and taking their chance of directing the storm?

If Mr. Burrows be now instructed to talk

of their five minutes existence, and their suicide dissolution, let me suppose for a moment that those who have instructed him so to speak had shortly before they so instructed him, at what he calls a memorable festival, pledged themselves and him to a different sentiment. Let me suppose that they had announced by one of the solemnities of such a meeting, their prayer, "that the Catholic committee might be dissolved by Catholic emancipation," and thus of necessity have implied their determination, that the committee should permanently continue, until parliament should have conceded to their wishes, and yielded the last trench in the contest. I would then desire him to reconcile his former and his present speech with each other, and with his client. I would ask him whether it was a justifiable charge which accused the government of a wish to obstruct the subject's right to petition, because they put in force the law against unlawful assemblies? And I would tell him that those against whom he directs the charge, are as much attached to the free constitution of the country as he is himself, and because I value and cherish the sacred right of petitioning, I trust, not merely that it may never be invaded and never forfeited, but that it may never be abused.

I wish that he had spared another topic, and had not charged the government of the country with a determination to put down the Catholic people. I should hope, and I believe, that those words hastily escaped his lips, and that he had scarcely uttered them, till he wished to retract them. They suit not with his character, who is less distinguished by splendid talents, than by the virtues of his heart, and who I am sure, would not condescend to adopt the vulgar calumny, which flings indiscriminate obloquy and imputes intolerance and bigotry to every man engaged, however conscientiously, in the discharge of public duty. I shall not deny, that the imputation coming from him wounds me; and that I had hoped that in twenty years in which I have not ceased to love and admire him, and in which I have laboured to deserve his esteem, I had not earned the character of a bigot: I acquit him of intending such a charge—but those who are every day indulging in such an accusation, little know the men against whom they direct it; they little know the exalted and noble personage who presides in the government of this country, or the character of those who have the honour to serve him, if they suppose them to be actuated by bigotry and intolerance, or of prejudice against our fellow subjects on account of their religious opinions. Intolerance! every sound understanding condemns, and every honest heart abhors such a sentiment. There is no man who will not embrace the abstract principle of toleration; there is no man who will not deny that religion is a question between man and his God. And that every man should be unmolested in the free exercise of his particular faith. What is so strongly expressed in the introductory resolutions of the 9th of July, to which Lord Fingall's

name appears, is a truism and first principle. As a first principle, no one will deny, that civil disabilities ought not to affect a man for his speculative tenets; as a first principle, I would say, that the privileges of every free country ought, like the mercy of heaven, to be open to all persuasions, and that my political opinions would not less revolt against an exclusive constitution, than my religious principles would be shocked by an exclusive salvation. Those principles, founded upon abstract justice, ought to be strained to the highest in their application to the affairs of mankind; but what is their application, and by whom is it to be made? With relation to the affairs of Ireland, the prevailing delusion of the country consists in always treating the question of Catholic emancipation, as a question of metaphysical first principle, and in representing the penal code as an original aggression, committed by persecution and intolerance, against the professors of the Catholic faith. Those who reason so, much mistake and much forget. The penal code grew out of political events connected with the most calamitous periods of our history, and is the fruit of civil discord and distracted times; I wish not to recall the memory of those misfortunes; that they should have produced a necessity for such laws every one must lament, that such necessity should have ceased, and that the severest provisions of those laws should have been repealed, every one must rejoice. But with respect to what remains, the wisest and the best of men in the empire differ from each other, both as to the principle, the time, and the degree. Some of the warmest advocates of the measure consider it a serious question of concession on the one hand, and security on the other; and would tremble rashly to apply an abstract principle to an established order of things, without providing against all the danger, which even the best changes are calculated to produce in political concerns. What then is the fair result from the tendency of this grave and comprehensive, and delicate question? Surely every man attached to the peace of his country, must answer, leave it to parliament. Entrust it not to popular discussion and agitation, alarming in proportion to its importance, in self-created conventions. Let the Catholics approach the throne and the legislature with their petitions in the manner in which they well know that they may be conducted; but let them not suppose, that those petitions are to be made a pretence for a distinct and Catholic parliament. The wisdom of the legislature must be supposed adequate to the difficulties of the empire, and to that wisdom let them be submitted. I mean not to adopt a course which I have reprehended in another, and discuss a political question in a court of justice; I am no political character, but I am anxious to repel the charge of bigotry, and to disabuse if possible, that prejudice which would identify an opposition to the Catholic committee with intolerance to the Catholic religion.

I trust, that it is neither bigotry nor intolerance to maintain the law and the public peace; and I am sure that no man, whether he is bound by official duty, or interested individually in the tranquillity of the country, can answer it to himself, if he stands by, and sees a self-created convention defying the laws and bearding the government.

Let the Catholics, I repeat it, pursue their object legitimately; but let them not cut their way to the temple of the constitution through the wounded laws of the land: That cannot be permitted. I trust, that parliament may throw the portals of that temple open to them, as far as it is consistent with the interests of the empire, the connection of the islands, and the safety and integrity of the constitution: I trust that the legislature in its comprehensive wisdom, may so adjust and reconcile, and secure the interests of all, that a system may be established, which, though not young, I hope I may live to see, which will leave to the Catholic nothing to complain of, and to the Protestant nothing to fear. But is this desirable consummation to be achieved by the formidable and illegal assumption of the Catholic committee? I speak with alarm and reprobation of that committee as a body. I know at the same time, that many of its members, several valuable men in my own profession—the noble lord who has attended during the greater part of this trial, and his friends and connections—engaged in it originally with fair objects and pure motives, not knowing that they were violating the laws of their country, and blind to the danger of such an association, and the mischiefs into which it precipitates the most innocent and well meaning: but while I do justice to their motives, I shall not shrink from speaking my mind of the body to which they belong, and shall assert my firm conviction that the Catholic committee has been the deadliest foe of the Catholic cause, and has been calculated beyond all other measures to disgust its friends, and give triumph to its enemies. What, I repeat, is the pretence for this frantic project of a convention? A proceeding only calculated for a disorganized government, and an extreme case? Are these the days of Runimede and the Revolution? Has our king rebelled against his subjects like John, or abdicated them like James? Has any thing happened to put the people upon constituting a new representative? Our empire is powerful, our constitution is free, our administration of justice is perfect, our parliament is enlightened, our prince is magnanimous; we enjoy every blessing that should inspire love for our country, and courage to defend it.

I have disclaimed the right of calling upon you for a healing verdict; but allow me to say that if you are satisfied of Mr. Kirwan's guilt, (and otherwise I wish not for his conviction), I doubt not that your decision will be salutary to your country. Punishment is not the object of this prosecution, which is not vindictive, but exemplary; I trust that its effects will be, to

bring back to their habitual respect for the laws of their country, the noble lord, and honourable and worthy men who have been misled upon the Convention act, who have been induced to persevere in its violation by error, and who have unfortunately engaged themselves in the infatuated project of establishing the Catholic committee. I trust that their eyes may be opened; that they may not be influenced by false shame to persevere in what is wrong, but feel that true pride and honour consist in acknowledging and retracting a fault. I trust that their example may be followed by others; that harmony may be restored amongst us, and that the consequence of this trial may be, the establishment of the law, and the pacification of the country.

## SUMMING UP.

Lord Chief Justice *Dowdes*. — Gentlemen of the jury; The importance of the case which is now before you, makes it less to be regretted that so much time has been taken up; a great portion of it, however, has been occupied by discussions with which we have nothing to do, being merely political, much more fit for parliament than for this court, and with arguing objections which do not press upon the jury for their consideration; the facts and the matter really existing in the cause for your consideration (attending to them, and not to irrelevant topics) are confined to a narrow compass.

The traverser stands indicted for an offence which, whether he has committed or not, you are to try. He is charged with having acted and voted at an election for a representative of a particular kind — that is the direct fact charged upon him. It will be for you, under the circumstances which have been proved, to say, whether that fact has been proved to your satisfaction, and if so, whether, as the law shall be stated to you, it be an offence.

The indictment against the traverser states, that a meeting was held on the 9th of July last in Fishamble-street; that the persons assembled, contriving and intending that an assembly should be thereafter held, to represent a great class of his majesty's subjects, the Roman Catholics of Ireland; that the mode and manner, and description of the representation which was to be constituted, were delineated by certain resolutions. Gentlemen, it will be enough for me to state from the resolutions, the construction of the assembly to be thereafter held, which was to consist of the Catholic peers, their eldest sons, the prelates of the Catholic church in Ireland, the Catholic baronets; ten persons to be appointed or chosen by the Catholics in each county, the survivors of the delegates of 1793, to constitute an integral part of that number, and also of five persons from each parish in Dublin: and that assembly thus constituted, is stated in the indictment to have been for the purpose of exercising an authority to represent the Roman Catholic inhabitants of Ireland, of procuring

an alteration of matters established by law in church and state, and under pretence of petitioning parliament. Gentlemen; the defendant is then charged, not with any act done at this meeting (for, at the first meeting of the 9th of July, it does not appear, nor is it alleged, that he was present), but with acting in conformity with those resolutions, and he is charged precisely with this, that, in order to assist in the formation of an assembly of the description which I have stated, and to carry the resolution of the 9th of July into effect, an assembly was held on the 31st of July, twenty-two days after at Liffey-street, in order to elect five persons to represent a district in the city of Dublin, commonly called the parish of St. Mary; that, at that assembly, Dr. Sheridan was appointed one of the persons to act as a representative of the Roman Catholic inhabitants of that district in the committee proposed to be formed, and that the traverser acted and voted in that election.

That is the import of the first count in the indictment. There is a further charge in the second count, which abstracts itself from the consideration of the resolutions of the 9th of July, and states generally that the traverser acted in a meeting held on the 31st of July, for the purpose of electing and appointing five persons to represent that district in a future assembly, which is described, and is of the same nature with that described in the first count, that is, an assembly formed with an intent to procure an alteration of matters established by law in church and state, under pretence of petitioning.

To establish these facts, three witnesses have been examined; the first of whom, Mr. Huddleston, speaks to the assembly of the 9th of July; he has told you that, among the persons there assembled, there were persons of great property, and of high character and respectability. He stated the resolutions which were passed, one of which corresponded with the indictment as to the description of the persons to compose the assembly which was directed to be formed; and it appears upon his testimony, if you believe him, that such assembly was to prepare a petition, on behalf of the Catholics, to promote a repeal of the penal laws, and that it was to consist of the Catholic peers, their eldest sons, Catholic prelates, baronets, and ten persons from each county in Ireland, and five persons from each parish in Dublin.

This testimony goes directly to the matter, and, if you believe him, the meeting of the 9th of July, by their resolution, as charged in the indictment, directed such assembly to be formed, as the indictment charges. Then, there are two witnesses deposing to the facts of a meeting held at Liffey-street, on the 31st of July. I need not minutely state what these witnesses have said, as you have taken notes of their testimony—each of them deposes to the same facts; many observations have been made upon what they said; it is enough far



me to say, that both agree in the material circumstances, that an assembly met on the 31st of July, in the chapel in Liffey-street—that at that assembly, it was proposed to appoint five persons to represent the Roman Catholic inhabitants of St. Mary's parish, to present their petition, and to transact the other business of the parish at the general committee; and you will observe, that by the resolutions stated by Mr. Huddleston, a committee was to be formed, consisting of Catholics, of whom, ten were to be chosen from each county, and five from each parish in Dublin.—These five persons were to represent the Catholics of that parish in the general committee. The witness then proceeded to show, how that election took place; that it was proposed that seven persons should be nominated, who should retire and choose the five persons who were to serve; that seven persons were accordingly named; the chairman naming the first, that person naming a second, and so on, until the number was complete. That these seven retired, and after some time, returned with a list of names; that a question was put upon each name, and that Dr. Sheridan was unanimously elected. The other four were also elected; some objection was made to one, on account of absence—but all the rest were elected unanimously.—Gentlemen, those witnesses have gone farther, and told you, that some of those persons upon being elected, accepted the trusts, and that the traverser rose and thanked the assembly, and promised to execute the trust reposed in him.

These witnesses have been cross-examined at great length, with a view (and if counsel have succeeded in that view, to your satisfaction, it will put an end to the cause) so to diminish or destroy their credit, as to render you incapable of believing the facts to which they have sworn.—It does appear that the recollection of the two last witnesses is now represented to you, more full in the account of the resolutions and proceedings described to you, than upon a former occasion; one of them states, that he has refreshed his memory by notes subsequently found, which, upon the former occasion, he had not.—These notes were produced; but were not read.—We know not their contents, and cannot judge of them; but the character and conduct of the witnesses have been examined into by a laborious cross-examination. I shall not go through it; but you will determine what effect it has upon your minds; whether it so reduces the credit of the witnesses, as that you cannot believe them in the facts which they attest, and which are necessary to bring the charge home to the traverser.

Upon the part of the traverser, the case is stated upon an alleged defect in the evidence, and upon a supposition that, if the facts be true, which the counsel for the traverser do not admit, no crime is made out against him. With regard to the weakness of the case on the part of the prosecution, you will judge, whether

you can reasonably doubt the truth of the facts which have been sworn to; you will reflect, and see, whether you can doubt what Mr. Huddleston stated, respecting the first meeting, its existence, and its acts; whether you can doubt the truth of the facts stated by the two other witnesses, relative to the second meeting, its acts, and the acts of the traverser.

If you have a rational doubt—not a mere suspicious difficulty—but the rational doubt of sensible men, of the facts which have been so sworn, you must acquit.

If you have any rational doubt of the connection between the two assemblies, the first count will be out of the case—but you will recollect that the resolutions of the 9th of July, if you believe the witness, direct a committee of the Catholics of Ireland, to be formed—how that meeting of committee is to be formed—and that among the parts of its formation, are to be five persons from each parish in Dublin; and whether you can doubt, that such election taking place twenty-two days after (at which election five were elected), the object of which is declared to be, to represent the Catholic inhabitants of the parish at the general committee, and at which election, if you believe the witness, the proclamation of government was mentioned as issued; or expected on that day, to prevent the existence of such a meeting, or such an election; and which proclamation is admitted to have issued on that day;—whether these circumstances leave any rational doubt of the connection between the assemblies, will be matter for your determination.

In addition to what I have already said, it is right to observe, what has been strongly put upon the part of the prosecution, that the facts so stated by these witnesses, are represented to have passed in numerous assemblies, and the material facts sworn to by those witnesses, are uncontradicted by any evidence.—As to what they have stated respecting the existence of those assemblies; if they did not meet at all, nothing could be easier, one would imagine, than to show that there were no such meetings upon the 9th, or 31st of July. If there were such meetings, and the witnesses misrepresented what passed at either of them, it must have been easy to produce numerous witnesses to contradict them. They themselves pointed out persons here in Court, who were present at the meeting they speak of.—What these witnesses have sworn upon this trial was well known to those concerned for the traverser, and they must have been aware that these witnesses would prove those facts. The former trial had made their testimony public, and it is admitted and alleged on both sides, that the case comes before you on the testimony of the same witnesses.

You will consider the weight of the observation which has been made upon the non-production of evidence on the part of the traverser—in my apprehension, it well deserves your consideration.

If these witnesses have satisfied you, beyond all rational doubt, that those assemblies met and acted in the manner which the witnesses have described, it then becomes necessary, that we should inform you how the law stands, as applicable to such meetings, and their acts. Gentlemen, the law has received from able counsel, both upon this, and upon a former trial, elaborate and able discussion; the subject has been carefully considered by every one of us; we have had repeated and frequent conferences upon it; there has been no objection made which has not been canvassed, and become with us, an object of deliberate consideration; and upon the law as applicable to this subject, I am authorized by my brethren to state, that no manner of doubt exists in our minds.

The legal question arises upon the construction of an act of parliament, made in the year 1793, entitled "an act to prevent the election or appointment of unlawful assemblies, under pretence of preparing or presenting public petitions, or other addresses to his majesty, or the parliament." It is not imputed to the traverser that he has been guilty of any degrading, unworthy, or immoral act; or any act illegal, abstracted from the consideration of the act of parliament, which I am going to state; but the question will be, whether he has violated the provisions of that act.

It is an act made in great political precaution; and with respect to this act, like all others, we, who sit here—not to alter, make, or correct the law, but—to declare it, are to suppose that this, like all other laws, has been made upon due consideration, and upon principles of sound public policy and necessity. It is not for us to oppose the declared will of parliament; to discuss the subject upon topics fit only for parliamentary debate, or to set our understanding in competition with the wisdom of the legislature; but it is our duty to pronounce upon the law as we find it, and feel it; and even though it may bear hard upon an individual, we are not to be influenced by that consideration; but it is our duty to pronounce what the law is, in all cases whatever—however we may, in some, feel for the accused.

Gentlemen, this is an act of parliament, having for its object, not so much the punishment of the members of such assemblies as are described in it, as the actual prevention of the existence of such assemblies; it is not, that a representative assembly is to meet, and that the officers of the law and government are to wait and see, whether they will do any thing hostile to the laws; but the object of the act is, the prevention of a representative assembly, having such objects as are mentioned in the statute, from ever meeting.—It declares, that if such assembly meets, it is an unlawful assembly; and attacks the very commencement of its formation, with a view to prevent its existence.—It does not do this upon the notion

that such assemblies are always, and of necessity, mischievous; that they cannot meet without doing wrong; but it is a precautionary act, and it recites, that the election or appointment of assemblies, purporting to represent the people, or any description or number of the people of this nation, under pretence of preparing, or presenting petitions, complaints, remonstrances, declarations, and other addresses, to the king, or to both or either of the houses of parliament, for altering of matters established by law, or redress of alleged grievances in church and state, may be made use of to serve the end of factious and seditious persons, to the violation of the public peace, and the great and manifest encouragement of riot, tumult, and disorder. This preface of the act is not introduced, or accompanied by a statement that such assemblies are in their own nature necessarily productive of mischief; but that such assemblies are readily capable, when met, of being turned by factious persons to improper or mischievous purposes, and, therefore, the statute has declared and enacted, that all assemblies, committees, or other bodies of persons elected, or in any other manner constituted, or appointed to represent, or assuming or exercising the right, or authority to represent the people of this realm, or any number or description of the people of the same, or the people of any province, county, city, town, or other district within the same, under pretence of petitioning for, or in any other manner procuring an alteration of matters established by law in church and state, are unlawful assemblies.

It then proceeds, if possible, to prevent the existence of such assemblies, and the means taken are, by enacting that, if any person shall give, or publish, or cause or procure to be given, or published, any written or other notice of election, to be holden, or of any manner of appointment of any person, or persons, to be representative, or representatives, delegate, or delegates, or to act by any other name, or description whatever, as representative, or representatives, delegate, or delegates, of the inhabitants of any province, county, city, town, or other district within this kingdom, at any such assembly, he shall be deemed guilty of a high misdemeanor.—From which it seems to us, that the legislature has made it a distinct and substantive offence, to publish a notice of such intended election, and it equally makes it an offence to attend, and vote, and act at such election; and it seems to us, that this is a distinct and substantive offence in the parties so acting, the very moment such election is made, and before the assembly, to which the persons have been so elected, has actually met.—The statute then proceeds to except and provide, that nothing shall be construed to extend to, or affect elections to be made by bodies corporate, according to their charters and usages, and also that nothing in the act contained, shall be construed in any manner to prevent or impede the undoubted

right of his majesty's subjects of this realm to petition his majesty, or both Houses, or either house of parliament, for the redress of any public or private grievance.

We have already, upon a former occasion, declared our opinion upon the true construction of this law; we have, however, allowed farther discussion upon it, by the counsel for the traverser; and I will advert to most, or all of the objections which have been made to the construction given by us to the act.

It has been argued, that an assembly, to fall within the penalty of this act, must be a *representative* assembly, representing part of the king's subjects, and meeting under pretence of petitioning; and the argument urges, that the meeting must be under a *false* pretence of petitioning.

Gentlemen, in my apprehension, that construction would but little accord with the provisions and objects of the act—the objection is founded upon the meaning of the word “pretence;” it cannot be denied, that the word “pretence,” in various instances, is used with various significations, according to the nature of the subject matter to which it is applied; it occurs in various acts of parliament; in some instances, with the epithet, *false*; in others, simply, as here, “under pretence;” and it is contended, that in *all* instances where it occurs, especially where it means the motive of the mind, it must be understood, as connected with the epithet, “false.” Instances of the use of this word, where the epithet “*false*” could not be intended, have been cited upon the part of the crown, from acts of parliament; instances have also been adduced, where the epithet “*false*,” has by the legislature been applied to it, where the legislature did not choose to leave the word simple, and at large; and an exceedingly strong instance has been adverted to by the counsel for the Crown, because it occurs in an act made *in pari materia*; the English act of parliament of Charles 2nd, to prevent tumultuous meetings “under pretence” of petitioning the king or the parliament: *there*, most manifestly, the word “false,” could not be understood; but in truth, it is a word of very various significations, and is used in various acts of parliament, either simply or with the epithet, *false*, annexed to it, according to the purpose for which it is intended. To suppose, that where it means the motive of the mind, leading to an act, it must always mean “false,” does not appear to me to establish a general rule of construction, which can be supported by reason or authority, or by fair observation, of all or any act of parliament, where the word occurs. Besides the instances which have been alluded to, I am reminded every day of a particular instance, where the words, “under pretence,” have been used by the legislature, where it is not possible to annex the epithet “false,” and where it so plainly signifies the motive of the mind, that you might with little injury to the phrase, and none to

the sense, substitute *motive* in its place. I refer to an act of parliament of the very same date as that in question, and which has been urged by the defendant's counsel, to have passed on the same day with this act in question, showing that the same parliament, and even the same men (for even with respect to that circumstance, some observation has been made, as if the word as used in the ancient statute, had, by modern use, varied its meaning) made use of this word “pretence,” where the epithet “false,” could not be applied to it. I allude to an act of the year 1793, which gives various beneficial privileges to the Roman Catholics, upon the terms of swearing an oath, which is set out in the act of parliament; and by that oath which is administered here almost every day, every person who takes it, swears that he abjures, condemns, and detests, as unchristian and impious, the principle that it is lawful to murder, or destroy, or any ways injure any person whatever, *for or under the pretence of being a Heretic*; and that no act in itself unjust, immoral, or wicked, can ever be justified or excused *by, or under “pretence” or colour*, that it was done, either for the good of the church, or in obedience to any ecclesiastical power whatsoever.

Now, one would be tempted to ask, whether any man of the thousands of all ranks and conditions, who have honestly and conscientiously taken that oath, ever connected the word “false,” with the word “pretence” in that oath, and whether the parliament, in framing that oath, could possibly have meant the “*false*” pretence of being a heretic, or the “*false*” pretence of being serviceable to the church. It is used as synonymous with “colour,” “cloak,” “under the allegation of.” It has been so taken by thousands of as honest men as any in the community, without conceiving that the epithet “*false*” was understood. In those instances, it would be absurd and monstrous to add it. In fact, you may apply to the word “pretence,” without injuring the sense in these instances, almost any epithet of bad import, except *false*. You may call it, a *base*, *wicked*, *impious*, *absurd* or *foolish* pretence; but you cannot call it a *false* pretence; if you do, you may make the sentence nonsense. These instances answer what has been said by the very able counsel for the defendant, that whenever the word *pretence* is used, to designate a motive of the mind, that it must mean *false* pretence—for you might, in both these instances, substitute the word *motive*, without injury to the sense.

But I do not wish to be supposed to argue, that, because in these instances that I have mentioned, it is impossible to conceive the word “pretence” to mean *false* “pretence,” therefore, it conclusively follows, that the word cannot mean “false pretence,” in this act, which passed on the same day. Very far from it—it would be absurd to say, that any such conclusion would inevitably follow; but as the word has various significations, though

it should be admitted, that it sometimes may mean *false pretence*, those instances show that it cannot be asserted always to have that signification, but that it may mean, and when used simply, often, if not generally, does mean, *colour of allegation*, abstracted from the truth or falsehood of it, *colour, cloak, or holding forth*, or other sense that might be put. But this I do say, that where a word has various significations, the fair way (in this instance, as in all others) to get at the actual sense in which it is used, whether in acts of parliament, or other writing, is an examination of the context; and if we find, as in the present case we do, that by construing the word *pretence*, to mean *false pretence*, we should make one half of the provisions of the act impracticable to execute; and the remainder inefficient for obtaining its object, we must hold it impossible to construe the word "*pretence*," to mean *false pretence*, in this act.

The provisions of the act for preventing the existence of such assemblies, for punishing the mere giving notice of an election (of a nature *contrary to the act*) to be held, the provisions for punishing those who shall vote or act in such election of representatives, the provision enabling magistrates to disperse such assemblies, if actually formed; some of these provisions of the act (and these provisions comprise all the remedies the act gives to the public) could not be executed, if the officer of the law must wait until it shall be ascertained by the conduct of the assembly so elected, whether in reality there be an intent to petition or not; that is, whether the *pretence* to petition be true or false. The truth or falsehood of the *pretence* could not be ascertained, until either the assembly had actually petitioned, or dissolved themselves without petitioning. The justification of the magistrate, or officers of the law must depend, not on their own acts, and the circumstances then existing, but must depend on the subsequent conduct of others; so also must the guilt of persons accused of acting at such election. And the mischief and danger, so clearly pointed out by the preamble of the statute, as the object of the act to prevent, could remain without remedy, mischiefs equally possible and practicable, whether such an assembly should or should not petition, or intend to petition—mischiefs not stated by the act, as in their own nature inevitable, and of necessity, flowing from such an assembly, but equally possible, and equally likely to happen, whether the *pretence* of petition be true or false.

In my apprehension, therefore, the argument, which requires that such an assembly should meet under a "*false pretence*," in order to bring them within the operation of this statute, has not the slightest weight, but goes, if admitted to, to make the act inoperative.

The true meaning of the statute is, that if they are representatives (for representation of theirs is essential to bring such an assembly

within the statute, and must be proved to the satisfaction of the jury)—and if they assemble with a view to procure an alteration of matters established by law in church or state, (another essential circumstance to constitute the offence) even though that effect was held forth to the world, as designed to be procured by a petition, and really was so intended, or by whatever other means such effect might be intended to be produced, such an assembly falls within the description of the act.

That this act was intended to be most comprehensive in its application to representative assemblies, in my mind, appears powerfully, from the saving which has been adverted to; where it declares assemblies to be unlawful, it saves and excepts the knights, citizens, and burgesses, elected to serve in parliament, and the houses of convocation duly summoned by the king's writ; the words which the act has used to embrace representative assemblies, meeting for the purpose of procuring alterations of matters established by law, are so large, that although it could not be conceived, that the parliament intended to put down the House of Commons, or the Houses of Convocation, yet the words are large enough to embrace them, being representative assemblies, and having the power of procuring alterations in church and state; and they are excepted out of the enactment, which one would think the subject itself would not render necessary; but it shows the vast extent of the words, which have been used, when parliament thought fit to save from their operation, the House of Commons, and the houses of convocation.

Another objection has been made, founded upon the proviso at the end of the act, saving a right of petition, that it must save the right of petitioning, though exercised by the representative assemblies.

The act certainly has a proviso, that any thing therein contained, shall not be construed in any manner to prevent or impede the undoubted right of his majesty's subjects, to petition his majesty or both, or either Houses of Parliament.

Now if I were to push that exception, so far as to say, that the subject may petition, even in a mode or manner, which the act has provided against, I should make it so inconsistent that the whole act would become inoperative. It is our duty so to construe acts of parliament, as to give effect to every word, if we can; and in doing so with respect to this particular act, it is impossible to hold, that it saves the right of petitioning, in a mode contrary to the provisions of the act, or otherwise, than as the act left that right *untouched*, just as the act in England, which prohibits the approaching the king or the parliament, in a greater number than is expressly limited. It saves the right of petitioning—not by numbers, to any amount, for then the act would do nothing: but as here, it leaves the right of petitioning as it was before, but prevents its being presented in the one case, by an *expressive number*, and in the

other, being prepared or presented by a *representative assembly*—and it would be monstrous so to construe an act, as to allow the proviso to countervail the whole of the enacting clauses, which it would if it received the extensive construction, which has been contended for here. It may have been the intention of parliament (and probably was) out of great caution to show the public, that the substantial real right of petitioning, was not intended to be affected; the enactment prohibits *one* mode of petitioning, and the proviso saves *all others*.

It is also contended that no representative assembly can fall within the act, if it be for *one single* object, that of petition. It is contended, that the character of the assembly declared to be an offence, must be taken to be—that of *representation* generally, or for numerous objects; but not of delegation for one particular act; and that such being the object here alluded to, it does not fall within the penalties of this statute.

On a former occasion, we thought this argument had no solid weight in it, and that it was sufficiently answered, when it was shown, that the assembly which is the object of the statute, must be a representative assembly;—that where the assembly was *representative*, and met with the view and for the object mentioned in the statute, it fell within the scope of this act, even, although the *sole* mean of that assembly was a *petition*—a *single act*—where the object of the assembly was, to procure an alteration of matters established by law, in church, and state—although the means by which it was to be procured, were confined to one single act—that of petition. The argument, in support of the objection, assumes that there cannot be a representation for one single act. But, the statute goes upon no such supposition; the offence in the assembly is representation, or assuming to represent the people, or any number, or description of them, under pretence of procuring by petition or otherwise, an alteration of matters established by law, in church or state; and that under whatever names the persons assembled, may give themselves, whether delegates, representatives, or any other description.

There is nothing in the act that requires, that this representation, to make it criminal, should be *general*; that none should fall within the description of *representative*, unless they assume all the powers of a parliament, or have in *express terms* many objects, or a great number of means for effecting one object confined to them.

To fall within the act, the assembly must be, or assume to be, *representative*.—The members of a representative assembly, are representatives, under whatever designation they may be called.

The character of the assembly or its members, is not made to depend on the number of its objects, on the generality, or particularity, of the trust reposed in them, but on the original constitution of the assembly: if it be elected,

or appointed to represent any portion of the people, and has for its object, the procuring such alteration of the laws as the act mentions, though it holds out to the world, and that truly, no other means, or intent of effecting that object, but a petition; it is a representative assembly, and its members are representatives within the meaning of the act: and with respect to the distinction taken, between *delegates* and *representatives*, the act seems to use these terms as synonymous, it is immaterial by what names they shall designate themselves, if, in fact, they are to act as *representatives* in a representative assembly, they fall within the act, and may be described as representatives.

But if more than one object were necessary to form the character of a representative assembly, under this act, a witness stating the resolution in Liffey-street states one of these to have been, to elect five persons to represent the Roman Catholic inhabitants of St. Mary's parish, to present their petition, and to transact the other business of the Roman Catholics of that parish at the general committee.

To suppose, that this must be a general representation, that the assembly should represent all individuals, for all possible purposes, would be supposing what the act of parliament never could have in contemplation at all. Supposing that it should be an assembly, assuming the power of the state!—Such an assembly wanted no particular enactment to put it down; nor was this act necessary to declare its illegality, no man could doubt its illegality.

I have thus thought it right to state the general grounds of our opinion, that such an assembly as I have alluded to falls within the meaning of this act of parliament, so far as the objections made to our construction of the act, have on this occasion been argued on. But suffer me to say, at the same time, with great respect, that I do not throw out these observations to you, with a view of asking your opinion upon any one of them, but in answer to the arguments which have been used at the bar, upon the law of the case, and that the public mind may be satisfied, that this Court retains the opinion which it held upon a former occasion, with regard to the law; certainly not calling upon the jury to decide what the law is, but trusting that in exercising their duty, they will consider themselves, as acting under a similar obligation, as we do in the discharge of ours. We are to give our opinion upon the law, and you are to decide upon the facts, according to the evidence, if you believe it, applying the law as declared to you, to these facts. That evidence shews that an assembly collected early in July, directed a general committee of the Catholics to be formed; if you believe the evidence, and have no rational doubt upon it, and that the meeting in Liffey-street, on the 31st of July, was in consequence of that previous meeting, and to carry the resolutions of it into effect; and that the witnesses acted in such latter assembly, as the witnesses for the prosecution have men-

tioned in voting and acting in the election of a person to be a representative in that general committee, so directed by the resolutions of the 9th of July; and that that general committee had for its object an alteration of matters established by law in church and state, — even although you should be of opinion, that the mode of effecting that alteration, was to be by petition, — in our opinion the case is proved against the traverser.

Whether you shall believe the witnesses, or not, I have already told you, is matter between you and your consciences. We have stated to you the law, as applicable to the case, if you believe the witnesses; if you do not, you ought to acquit.

You have heard from both sides, of a former verdict. With regard to that and all other cases where verdicts are canvassed; I have always entertained the highest possible respect for the verdict of a jury. I always believe their verdict to be honest — and I firmly believe that the verdict alluded to was an honest verdict, founded in the conviction of the jury. But it frequently happens in this court, and in the other courts of this hall, that after a verdict has been found, a new trial has been directed in the same cause, and in such case the verdict so found, is by no means conclusive upon the subsequent jury; for, if it were, it would in truth be in vain to send a case to a second trial.

You are told that the verdict alluded to, was found upon the testimony of the same witnesses. The observation is well founded, as to the identity of the witnesses. You will consider whether they have accounted for their testimony being in some respects more full than it appears to have been before. It is not for me to say, whether the former verdict was right or wrong; it is not for us to say how the act is. It is for you to act upon your own judgment, and decide in this case according to your own consciences, and not by the former verdict, unless your own conviction is the same as that of the former jury.

There is one matter more, and only one which I think necessary to submit to your attention — that in case you should believe the evidence — (upon which supposition I have stated what the law is; and upon the contrary supposition have told you, that you should acquit) — it will then be necessary to have some information from you, and which you alone can give — that is, to tell us whether the election which took place in Liffey-street, was confined to the representatives of the Roman Catholic inhabitants residing within the bounds of the city, strictly so called, or was intended to be intended to represent the Roman Catholic inhabitants of the whole Roman Catholic parish of St. Mary, which extends into the county.

For information we require for a question of future discussion; we call for your opinion as the fact.

With regard to the evidence bearing upon it, it seems to stand thus: — The resolution

of the 9th of July directed, that five persons should be chosen for each parish in Dublin; and ten for each county; the meeting at Liffey-street elected five persons; and the evidence of Shepherd and M'Donogh is, that they elected them to represent the parish — then, it is for you to say, whether that election was, or was not, to comply with the election directed by the resolution of the 9th of July — an election to represent a parish within the city; — and you will judge, whether they meant to confine the election strictly to the city, or meant that it should represent the whole parish, part of which extends beyond the city (the county being by the resolution of the 9th of July, to be separately represented). You will judge of the meaning of the resolution, and the meaning of the parties acting in the election, and upon them you will form your own conclusion.

If you believe the evidence, you will find the traverser guilty — and if so, you will inform us whether in the election, the representation was confined to that part of the parish, which is in the city or extended to the part which lies in the county.

The jury retired, and after deliberating near half an hour, returned a verdict, finding the traverser guilty; — And that they were of opinion, that the election of delegates held in the chapel of St. Mary's parish, in Liffey-street, intended to include the Roman Catholics of the Catholic parish of St. Mary, in the city of Dublin only.

*Monday, February 2d.*

**Lord Chief Justice.** — In this case of the King v. Kirwan, the point which was made on behalf of the defendant, has been submitted to eleven of the judges (Mr. Justice Mayne being absent) who are unanimously of opinion, against the objection.

**Mr. Attorney General.** — My lords, it is my duty to request the Court to appoint a day for pronouncing judgment upon the defendant. But a notice has been served of a motion to set aside the finding of the jury as to the collateral issue.

**Mr. Barrowes.** — My lords, after the judges have determined the point, the traverser will not persevere in that motion.

**Mr. Attorney General.** — My lords, the object of my present motion is, that Mr. Kirwan should be brought up to-morrow, to receive the judgment of the Court. Wednesday will not be a sitting day, and when my motive shall have been explained, I am persuaded that both the Court and the traverser will acquiesce in it. It is not my wish that any punishment whatever should be inflicted on Mr. Kirwan, further, than that the Court should make such observations on the nature and consequences of the offence, as wisdom

and justice may suggest. I am happy to say, that his majesty's government have taken the subject into its most serious consideration, and having been fully satisfied that enough has been done to satisfy the public at large, not only as to what the law is on the subject, but that the law, as it now stands, *can, and must be enforced*, and that every man in the community, not only *ought*, but *must* obey the laws; it is the opinion of government that enough has been done to restore the public peace; and, therefore, on the principle on which this prosecution was undertaken (the sole end and view of it having been accomplished), I have great gratification in saying, that it is the determination of government to prefer and adopt on this occasion, the *LIVE OF MODERATION RATHER THAN THAT OF SEVERITY*; and, therefore, not to proceed on the trials against the several other traversers, indicted for a breach of the Convention act. At present, we cannot entertain a doubt that the persons engaged in those assemblies, after all that has passed, will cease to offend against the laws; and that all these who have an honest and honourable, and a legitimate object in view, will not persevere in exhibiting a bad example to the lower order of the people. We trust and are satisfied that the lenity and moderation of government in this instance will produce a salutary effect on the conduct of every Catholic whose views and designs are honest and honourable; and if any evil disposed persons shall again be found to disturb the public peace, we have no doubt that the *firmness of government* and the *strong arm of the law*, will suppress and put down such mischievous designs.

I also feel pleasure, in stating, that it is our intention to include the criminal information in the case of the King against the earl of Fingall, and to enter a "*Noli prosequi*," in all the prosecutions now pending.

My lords, I here feel myself called on to say of the noble duke placed at the head of his majesty's government in this country, that it has ever been his object and the spirit of his administration, not only to do equal justice, but to act in the most *conciliating manner* to EVERY CLASS of his majesty's subjects.

Mr. Burrows said, he thought it right to state on the part of the earl of Fingall, that his lordship in the whole of the proceedings had acted under the first legal opinions. That it never could have been his intention either to disturb the public peace, or to violate the law of the land. Lord Fingall and the gentlemen of the Catholic committee, had wished and endeavoured to obtain a *special verdict*, in order to have the law finally settled. He (Mr. Burrows) did not mean to say that it was not now settled; but that it had ever been the anxious wish of his clients to put the question in that train, so as to have THE LAW DECIDED BY THE DEMER RESORT. There were various modes by which that object might have been

effected, and the attorney-general would do him the justice to admit that he had made several propositions to the law officers of the crown, that the law arising on the Convention act, as applicable to the Catholic committee, *should be submitted to the opinion of the demer resort*.

He was instructed to state, that Mr. Kirwan had left town on particular business; not having expected that he would be brought up for judgment so soon as to-morrow.

The Court fixed Thursday for giving judgment.

#### Thursday, February 6th.

This day Mr. Kirwan appeared in Court to receive sentence.

Mr. Justice Day.—Mr. Thomas Kirwan; you have been tried upon an indictment found against you upon the Statute of the 33rd of the king, commonly called the Convention act, for having voted and acted in the election of Delegates to represent the Roman Catholic inhabitants of a certain district in the city of Dublin in the general Catholic Convention; and after a patient and solemn trial of four days you have been, upon clear, conclusive, and uncontradicted evidence, found guilty. Indeed your own counsel, eminently qualified to make the most of any case, seemed from the beginning to have abandoned and admitted this fact, for in controverting that fact, which was not committed in a corner, they confined your defence, first, to a challenge of the array, which after two days discussion, proved false in its foundation, and malignant in its nature; secondly, to an endless and tiresome course of unavailing and irrelevant cross-examination; and lastly, to certain nonsuit points, evading the truth and merits of the case, certain variances between the indictment and the evidence, which being submitted to the judges, were unanimously, and without hesitation held by them to be immaterial, and were over-ruled.

The act of which you stand convicted, has been declared and pronounced by the legislature a high misdemeanor, not for being in its own nature contrary to every principle of honesty, morality or justice, but for wise political reasons, namely, because (in the words of the Statute) "the election of representative assemblies may be used to serve the ends of fictitious and seditious persons to the violation of the public peace." The Statute, therefore, first declares and enacts, "That all representative bodies, all delegates for public matters, are unlawful assemblies," and provides, that even the pretence of petitioning, whether true or false, the most constitutional or specious of all purposes; shall not serve to cloak the proceeding. The statute then proceeds in the wise spirit of precaution, to arrest the offence in the very first steps of its march,

and it enacts that the primary or constituent meeting, the voting or acting at such primary meeting: nay, even the publishing a notice of such intended primary meeting, shall be a high misdemeanor; and this, before it is possible to say what the conduct of the future elected assembly will be. In a word, the pretence of petitioning forms no competent ingredient of this offence; it is the construction or constitution, and not the conduct or object of such an assembly, which the statute makes the criterion of its legality or illegality. It is not the province of the bench to vindicate the legislature, but it would be easy to shew that there is no hardship in this statute; it restrains alike the Protestant and the Catholic; it does not controvert a single principle of the constitution. By a superabundant caution, it saves the sacred right of petition, leaving it in the same precise plight and condition, as when asserted at the glorious Revolution, by the Bill of Rights. Thus that inestimable and unalienable privilege of a free people has been expressly secured alike to all the sects of Ireland, whether Protestant, Presbyterian, or Catholic, in the same purity and perfection in which it is enjoyed by our fellow subjects of England; and, for myself, I own, I do not desire to move in a wider sphere of civil and political liberty, than that high-minded and intelligent people are contented to enjoy.

In England, where a clear conception and a noble jealousy of their rights and privileges are known to pervade the whole mass of the people in their wildest excesses of freedom assemblies of this description are never thought of, these conventions and congresses, and other assemblies, formally elected to represent great bodies are exclusively of Irish growth, and have always been plainly calculated to overawe the parliament, to control its deliberative faculty, and to brave and browbeat the government. Such was the Dungannon Convention in 1793, such the Volunteer Convention of 1782, such the Catholic Convention assembled at Kilkenny in 1642, composed precisely of the same materials as the present Catholic Convention, of peers and prelates, and the county and city representatives, who commenced their labours with solemn professions of humility and moderation; and ended in forming themselves into a parliament, and assuming the functions of a legislature.

Such assemblies as they are, the representatives of discontent, become, by an easy and natural transition, the ministers of sedition. I am persuaded, from the well-known personal character of some leading individuals of the Convention, that they have entered into it, with the most innocent, and even virtuous views, and that they would be the last to harbour any design against our constitution—that glorious constitution which every individual of them has sworn to protect in church and state; but it is in the nature of man when he once passes the limits of the law, to forget soon his first motive of action, and often

to launch into excesses and extravagances, at the bare mention of which, his heart at first would have recoiled with horror. Turbulent and loud-tongued politicians, whose trade is declamation, and whose motive is not religion but ambition, soon command and domineer at such assemblies: the light and worthless, like chaff, rise to the surface, and soon acquire an ascendancy, while those of intrinsic weight and sterling value sink to the bottom and disappear.

Under those circumstances, the government, in discharge of its first and most imperious trust, have stepped out seasonably, and with a laudable energy, to arrest the impending danger, but with an energy not more laudable and efficient than the moderation and conciliatory spirit which they have since displayed. The attorney-general having obtained upon two several occasions the deliberate construction of the Court, upon the statute in question, feels himself at liberty to indulge the well-known mildness of his nature, and the magnanimous moderation of the government, and has entered a *Noli prosequi* upon the several other depending cases; he has done this too, unclogged by any disparaging terms or conditions, confiding implicitly in the loyalty and good sense of the Catholic Convention, that they will bow with becoming and respectful submission to the law as now expounded—expounded, it is true, by a fallible judicature, but still the established law of the land, as thus expounded until the decision shall be reversed by the *dernier resort*. Before this, the first judicial construction of that statute, it was but fair to presume that the Catholic body acted in mere error, and not under a wilful and perverse misconstruction of a law upon which some able and virtuous men had entertained a conscientious difference of opinion, and therefore, every antecedent violation, it was a wise, conciliatory, and just policy to overlook and to consign to oblivion; but the case henceforward will be widely different, henceforward no subject of the land, whether Protestant or Catholic, can say, that he violates the law inadvertently, and without notice; every future infraction of this statute, as it will be wilful and contumacious, so it must be visited with the most exemplary punishment.

Before I close, allow me to recommend, Sir, to you, and through you to the Catholic body, the sage counsel of their best adviser, and their cordial friend, the solicitor-general. I agree implicitly with him, that the Catholic cause has not so mischievous an enemy as the Catholic Convention—that unlawful assembly had diverted the public mind from the true question, and before the question of Catholic Emancipation can be discussed, the laws and constitution, which this assembly has invaded, must be vindicated. It is not through the wounded sides of the constitution or over the trampled laws of the land, that they can hope to gain a passage to the temple of liberty. It is not by an intemperate course, calculated to



excite the claim of every reflecting mind, that they can hope to assuage the prejudiced, to strengthen their friends, or to persuade the legislature that their claims are either expedient, or justified. If that brilliant combination of eloquence, good humour, and sound sense, which was poured out upon the subject; if that fascinating display of every thing that an highly-gifted head, and an amiable heart could suggest has failed to conciliate the Catholic body, or to open their eyes to their true interests to the right road which they should pursue, and to their best friends, why then it is in vain to offer them admonition, though one rose for that purpose from the dead. But I do not despair of them. The Court entertains the most sanguine hope, that

this act of parliament which had never before been awakened into action, will be allowed to resume its long slumber in the Statute-book, and in that hope have resolved to inflict upon you a nominal punishment; feeling it, however, to be their duty to express their most marked reprobation of certain slanderous practices in the course of your defence, but particularly of your affidavit, which, though circulated in congenial papers, with all the triumph of truth, was found to be so false and scurrilous as to be ordered off the file, and not allowed to pollute the records of the Court.

The sentence of the Court is, that you, Thomas Kivan, be fined one mark, and discharged.

589. Proceedings on the Trial of DANIEL ISAAC EATON for a blasphemous Libel, tried at Guildhall, by a Special Jury, before the Right Hon. Edward Lord Ellenborough, Lord Chief Justice of the Court of King's Bench, March 6, 52 GEORGE III. A. D. 1812.\*

**COURT OF KING'S-BENCH,**  
*Guildhall, March 6th, 1812.*

**NAMES OF THE SPECIAL-JURY.**

*W. P. Hayward, merchant,*  
*J. Dunge, merchant,*  
*J. Phillips, merchant,*  
*J. Hodgson, merchant,*  
*Daniel Lambert, merchant,*  
*T. W. Wetherington, merchant,*  
*H. Parr, merchant,*  
*G. Stevenson, merchant,*  
*Augustus Browne, merchant,*  
*Thomas Luff, merchant,*  
*S. Wilson, merchant,*  
*J. Wislure, merchant,*

Mr. *Garrow*.—As the defendant has no counsel and may appear to defend his cause in person, is not your lordship of opinion that he should be called.

Lord *Ellenborough*.—Certainly.

The defendant was then called; but he did not appear.

Lord *Ellenborough*.—Is the defendant aware that his trial stands for this morning?

Mr. *Garrow*.—He attended on the former day and was then told the trial would come on at nine o'clock this morning; since which a letter has been written to him on the subject.

Lord *Ellenborough*.—Let the trial proceed then.

\* [See the trials of this same defendant for seditious libels Vol. 4, of this continuation p. 653 and 725.

[In a few minutes afterwards the defendant made his appearance, and took his seat at the table.]

Mr. *Abbott*.—May it please your Lordship, Gentlemen of the Jury—This is an information exhibited by his majesty's attorney-general against the defendant, for publishing a blasphemous and profane libel against the Christian Religion, and the divine Founder of it.

Mr. *Attorney-General*.—[Sir Vicary Gibbs, afterwards Lord Chief Justice of the Common Pleas].—May it please your Lordship, Gentlemen of the Jury.—In the execution of my official duty I have felt it incumbent on me to file this information against the defendant, for the publication of a libel, so full of impiety and blasphemy, that I had flattered myself with the hope that the British press would never have been disgraced by sending forth to the world such a work. In opening this information, you have been told, that it is for a libel against the Christian religion, and the holy Author of it; and I know not how to express to you, in terms worthy of the occasion, the regret and indignation I feel, that any man in this country should dare to disseminate such pernicious doctrines. In the publication to which I allude, the author denies the existence of that religion, as derived from a divine origin, on which we all depend for eternal happiness—to which we all look for comfort and consolation! He states, that the holy scriptures are, from beginning to end, mere fables; he tells you, that the authors of that work are liars and deceivers; he denies the miracle,

the divinity, the resurrection, and the ascension of our Saviour; he contradicts his existence as the son of God; he denies his having appeared on earth, even as a man; or, rather, he treats the whole of his history as fabulous—similar to that of the heroes and deities whose names are handed down to us in the heathen mythology! And describing what infidelity, in his acceptance of the term is, he thus expresses himself—"he that believes in the story of Christ is an infidel to God."

The effect of such doctrines on society at large, on every individual who composes part of it—the evil consequences which must inevitably be produced by them, if they were generally disseminated, and took root in the minds of those by whom they were perused, would be dreadful in the extreme! I am now addressing some of you who are advanced in years—who have been long bound together by those links which unite society—I am addressing some of you who are parents; but all of you have ties and connections in the world—I would ask those of riper age, where they are, in the close of life, to look for consolation, except in the principles of religious belief? If they have acted with unsullied integrity, where are they to seek for their reward, but in the accomplishment of those promises which the scriptures hold forth? Or, if they have committed offences, to whom are they to look for forgiveness, if not to him whom this impious author denies to have ever existed? Of you who have families, I would ask this question—what is your most important object, as it is your most imperative duty, to inculcate and impress on the minds of your children? Is it not respect and veneration for the religion of our common country, which all enlightened and virtuous men, who have studied, have firmly believed in? Do you not build all your hopes of welfare here, and happiness hereafter, on that faith to which you give implicit credit? And what would be your feelings, if you found that publications of this description had been brought under the consideration of your dearest relatives, which, having corrupted their minds, had also, as must inevitably be the case, subverted and destroyed their morals? To what are we to look for honesty in the conduct of our domestics—from what are we to expect a faithful and conscientious discharge of their duties, if not from that strong sense of morality which a belief in our holy religion creates? On what tie can we depend for a just performance of that which they are required to do, if the great principle of religion be thrown aside? These are temporal considerations; but even in this view of the case, can there be any doubt of the pernicious tendency of this blasphemous book, the great object of which is, to lay the axe to the root of religion—to extirpate it entirely from our minds—to persuade us that the whole of it is a fiction—to bring into disrepute that by which we are to be guided, and by means of which we hope finally to prevail in another and a better world?

What have we to expect, if those long-established feelings and principles be expelled from the minds and the hearts of men? What reliance have I to receive from you, gentlemen of the jury, as I know I shall, an honest verdict on the evidence which will be laid before you? On what were you sworn that you would act conscientiously? To what were you referred when you swore that you would return a true verdict, "so help you God?" You swore on that holy work which the author of this impious pamphlet holds up as a falsehood and an imposture—that holy work which, for ages, has been the object of veneration. What reason have you to believe that the witnesses will speak the truth, except from the operation of those religious principles which I have already described to you? On what are they sworn? Are they not also sworn on that sacred volume, which the author of this vile publication has designated as the wicked invention of men? What hold have you or I (I speak it without the possibility of its being taken in any improper sense), what hold, I ask, have we, on the mind of his lordship, that he will administer the law with strict justice, uprightness and impartiality? What security has the defendant himself that pure justice will be rendered to him on his trial, except the oath of his lordship, which binds him "to administer impartial justice between those who prosecute, and those whose conduct is brought before the Court?" If I were asked whether I believed that there are greater ties on his lordship than his oath of office? I would, without hesitation, answer, that there are—ties on which I could fully rely, if he had never taken that oath; but why could I place this reliance on them? Because, from our holy religion, his lordship has imbibed such pure sentiments of truth and justice, as would direct him, independent of the obligation of an oath, to administer the law with unbiassed equity. But what hold could I possibly have on his lordship's mind, if I were not assured that he was fully convinced of the great truth of that religion which is now sought to be held up to the contempt of mankind? These are advantages, which, in temporal affairs, we find to result from a due observance of religion; but there are other consequences of still greater moment—our civil and religious constitutions are so closely interwoven together, that they cannot be separated—the attempt to destroy either is fraught with ruin to the state.

When any individual assumes a situation of trust or power in the government, the constitution prescribes an oath, which obligation at once refers the party to certain religious duties, and binds him to the proper execution of those of a civil nature. It is evidently with a reference to these religious duties, that he undertakes the performance of a civil office, that oath is on the holy gospels of God, that he will execute, truly and faithfully, the duties allotted to him, from this obligation not even the monarch is exempted.

We are now proceeding against the defendant, by a prosecution which calls on him to answer criminally for the act which he has committed—for an offence as serious to the well-being of society, as any that can possibly be imagined; for it seems most evident, that if men lose the reverence which they owe to, and, I believe, with very few exceptions, all men in this country feel for, the established religion, no effectual tie, no controlling check on their conduct, remains. You have too much sense and too much experience in the ways of the world, not to know, that if you dismissed from human nature all fear except that of temporal punishment for any wicked act which is contemplated, bad men would be let loose on society, and the evils which must result would be more numerous and more dreadful than I can describe? I am aware that the fear of punishment would operate in a certain degree—but not so powerfully as that strong conviction, that we are answerable hereafter for the conduct we pursue here—and that, in proportion as it is good and commendable, or base and vicious, we shall receive reward or punishment, this is the feeling which acts on all Christians; and I am confident there are very few persons in this country, who do not subscribe to this principle. What then is the offence of him who seeks to sap and undermine it? Ought not he who wishes to remove from society that which best unites it together, be called on to answer for so foul a crime?

What I have stated is sufficient to convince you, and I am sure I need say nothing to convince his lordship, that it is an infraction of the law; because I have shown, that the doctrines which the defendant has promulgated, are destructive of the peace of society, and subversive of the comfort and happiness of every individual composing it. Still, however, it may not be improper to state, briefly, what is the law on the subject, and how offences of this kind have been treated by the highest and most celebrated judicial authorities. If I were to refer to the text writers, I should find that blasphemies against God or religion were ranked amongst the greatest crimes men could commit, and as such were severely punishable.

In former times, I learn, that defendants, like him before the Court this day, have been called to answer, in courts of justice, for their delinquency. Of this description is the case of Taylor, tried before lord chief Justice Hale; and I am extremely glad to have it in my power to cite a case decided by him, for a wiser man, a better lawyer, or one who had a greater respect for the rights and liberties of the subject, this country never produced; therefore I am rejoiced that I can refer to his high judicial authority.

Taylor's case, to which I have alluded, is to be found in 1st Ventris, page 293. It there appears that the attorney-general had filed an information against the defendant for an offence far short of that committed by the present defendant. Taylor was prosecuted for

words spoken; not for a libel—the effect of which must be more dangerous, as its dissemination must be infinitely greater. He was proceeded against for uttering divers blasphemous and impious expressions, horrible to hear—he asserted that Jesus Christ was a *bastard* and a *whore-master*—and that for himself, he feared neither God nor the Devil. On the trial he denied that he had called our Saviour a bastard, but admitted the rest of the expressions; which, however, he said, he had used in a sense different from that in which they were usually received. His having called Christ a *whore-master* referred, he observed, to his being *master of the whore of Babylon*; and the other expressions he endeavoured to explain by similar evasions. But on the evidence which was produced against him he was found guilty; and lord Hale, in observing on the case, thus expressed himself:—"such kinds of wicked and blasphemous words are not only a crime against the laws and religion, but against the state and government of the kingdom, and, therefore, punishable in this court. For, to say that religion is a cheat, is to destroy the frame of society; and the Christian religion being a part of the constitution, to say that it is an imposture, is to speak against the laws of the land." These are the words of lord Hale, in a case far less touching the peace and happiness of society, as I shall prove to you, than the present.

In the time of his late majesty king George the 2nd, another case occurred, that of the *King versus Woolston*, which is reported in 2nd Strange, p. 832. The defendant was convicted on four informations, for having uttered blasphemous discourses against our Saviour. He, however, moved for a rule to show cause why a new trial should not be granted; but the court refused the application. They would not suffer it to be debated, whether the making use of blasphemous expressions was not a crime, acting on the same doctrine as had been laid down in Ventris. In their decision they laid great stress on the word generally, as applied to blasphemous discourses. They meant not, however (and they so expressed themselves), that the law should extend to disputes between learned men, on controverted points of religion. The defendant Woolston was ultimately punished by fine. Lord Raymond was then chief-justice, and sir Philip York, afterwards lord Hardwick, attorney-general. Such were the doctrines laid down by those learned persons in those times.

In the last report which I have cited, I am glad to find the doctrine so clearly stated. The Court desire it to be understood, that they proceeded not against a man, who, arguing on points arising from a particular interpretation of disputed passages in the scriptures, had put a meaning on them, not compatible with the strict rules of our stricter divines. It was not on such an occasion that such a decision would have been given, or such a punishment inflicted.

Let us, as far as is consistent with the safety of society, support a free press—open to discussions on moral, on philosophical, on political, and on religious subjects. As far as is compatible with public safety, I am the first man to maintain that no clog should be placed on the freedom of the press: but the publication which the defendant has sent forth cannot be tolerated, for it goes to destroy that social system, to the support of which all publications should be directed. Let the discussion of controverted points be fairly admitted; but let none dare to put the axe to the root of the tree, and, having subverted it, leave us without any hope of happiness here, or prospect of felicity hereafter!

I have thought it proper to state these general observations to you, comprising an account of the nature of the book, and of the law relating to the offence, before I read to you the passages themselves on which the information is founded: in truth, it is a most disagreeable task, and I wish to be spared so irksome a duty; I would not permit my learned friend to read them, for I thought once was more than enough for them to be heard, if it could be avoided. When I stated to you the doctrines which were laid down from the bench, in the cases which I cited, I should have observed that the same principles were supported by a learned judge (lord Kenyon), whom many of you must recollect with reverence and respect, and who some years since sat in the place now occupied by his lordship. It happened that a book, which bore the name of the same author that is prefixed to this publication, which, in fact, purported to be a former part of Mr. Paine's *Age of Reason*, was published by a man of the name of Williams;\* against this man, who was hardy enough to disseminate a work, containing not exactly the same, but doctrines similar to those advocated in the present pamphlet, a prosecution was instituted: the case was tried before lord Kenyon, who, in laying down the law, adhered to the principles promulgated by lord Hale and lord Raymond at different periods, and supported their view of the law by his own great authority. He stated that it could not be doubted that offences of this kind were cognisable in civil courts of justice; it being of primary importance to the peace and welfare of the country, that, when men were bold enough to disseminate principles dangerous to the safety of the state, they should be unenable to the outraged laws of their country.

It may be alleged by the defendant that he is not the author of the book in question. Who is really the author I know not—it bears the name of the late Thomas Paine; but this I know, that when the defendant published it to be world, he was perfectly conversant with its contents; and stated, that he was at the pains and expense of importing it; he described the nature of the pamphlet, and quoted a passage

to prove that it had proceeded from the pen of that most mischievous writer, whom I have just named; therefore, he cannot say, that he does not participate in the guilt of the author, that poison, which grew in another country, he imported and disseminated here! I have troubled you, perhaps, too much at length, on this subject; but I feel desirous that it should be generally known and understood—that no doubt should remain in the mind of any person—that those who send forth to the public works of this pernicious description, are amenable to the laws of this country, and have always been so. Indeed I might have gone farther; it would be no difficult thing for me to show, that in all civilized states, those who wrote against the established religion, have been considered deserving of punishment.

I shall now proceed to read to you, those passages which have been selected as the object and foundation of this prosecution; and yet, as they must be read by the proper officer, and as, in the course of my statement, I have fully described the publication, my better counsel directs me to abstain, and to content myself with repeating one passage from the last page of the work; it is the inference which the author means to draw, and the deduction which he wishes to impress on the minds of his readers—"the priests," (he says) "of the present day profess to believe it, [the Christian religion]—they gain their living by it, and they declaim against something they call infidelity. I will define what it is—He that believes in the story of Christ, is an infidel to God."

#### EVIDENCE FOR THE PROSECUTION.

Mr. Henry Bell Raven sworn.—Examined by Mr. Garrow.

What is your name?—Henry Bell Raven.

Did you, on the 19th of October, go to a shop in Ave-Maria-Lane, professed to be kept by the defendant?—No; I went on the 18th of October.

When you first went into that shop, whom did you find serving in it?—I found a young woman behind the counter, folding sheets.

Had you any previous information that the book in question was for sale at that place?—I had.

Did you ask for a copy of it?—I did.

Was a copy delivered to you, by the young woman who was serving in the shop?—There was.

Is that the book in your hand?—It is.

Did you seal and mark it, that you might know it again?—I did.

While you were in the shop, did the defendant, Eaton, come in?—He did, while the young woman was folding the book in paper.

Had you any conversation with the defendant on the subject of the work?—I inquired of him, how he knew it was Tom Paine's writing; observing that Paine had been dead some time. The defendant answered I might rely on it that it was Paine's writing, as he had

\* Vide Williams's case, 5 How. Mod. St. Tr. 653.

himself taken the trouble of procuring a printed copy of the work from Mr. Duane, the editor of the *Aurora*, at Philadelphia. The defendant also said, that, by turning to a passage in page 89 of the work, I might be convinced that the book was Paine's writing.

Do you mean that he turned over the book, and pointed out the passage?—Yes; he turned to the page, and pointed it out.

Did you pay for the book?—Yes; I paid the shopwoman.

Before the defendant came in?—Immediately before.

Did you, in his presence, take away the book which had been put up for you by the young woman?—I did.

Repeat the passage which the defendant pointed out to you.—“He that believes in the story of Christ is an infidel to God.”

Is it the same passage with which Mr. Attorney-general concluded?—It is.

Mr. Garrow.—Deliver in the book. Probably your lordship would intimate to the defendant that if he has any questions to ask the witness, this is his time.

Lord Ellenborough.—Defendant; do you wish to put any questions to the witness?

Mr. Eaton.—No, my lord.

Mr. Lowten then proceeded to read the Title page, viz.—“The Age of Reason; part the Third; being an Examination of the passages in the New Testament, quoted from the Old, and called prophecies concerning Jesus Christ. To which is prefixed an Essay on Dream, showing by what operation of the mind a dream is produced in sleep, and applying the same to the account of dreams in the New Testament. With an Appendix, containing my private thoughts of a future state; and remarks on the contradictory doctrine in the books of Matthew and Mark.”—

Lord Ellenborough.—This is not charged in the declaration. It can only therefore be read for the purpose of showing the *quo animo*.

Mr. Attorney General.—I have directed it to be read, because it states that the work is published in London, by the defendant Daniel Isaac Eaton; and also, as your lordship observes, to prove the *quo animo*.

Mr. Lowten then proceeded.—“By Thomas Paine, Author of the works entitled *Common Sense*, *Rights of Man*, part first and second, and *Dissertations on First Principles of Government*. London: Printed, published, and sold, by Daniel Isaac Eaton, at the Ratiocinatory, or Magazine for Truth and Good Sense, No. 3, Ave-Maria-Lane, Ludgate Street. 1811. Price Three Shillings.”

Next followed the passages selected from the work.

Page 35. “But the case is, that people have been so long in the habit of reading the book called the Bible and Testament, with their

eyes shut, and their senses locked up, that the most stupid inconsistencies have passed on them for truth, and imposition for prophecy. The all-wise Creator hath been dishonoured by being made the author of *fable*, and the human mind degraded by believing it.”

Page 41.—“For my own part, I do not believe there is one word of historical truth in the whole book. I look upon it at best to be a romance; the principal personage of which is an imaginary or allegorical character, founded upon some tale, and in which the moral is in many parts good, and the narrative part very badly and blunderingly written.”

Page 45.—“I forbear making any remark on this abominable imposition of Matthew. The thing glaringly speaks for itself. It is priests and commentators that I rather ought to censure for having preached falsehood so long, and kept people in darkness with respect to those impositions. I am not contending with these men upon points of doctrine, for I know that sophistry has always a city of refuge. I am speaking of facts; for wherever the thing called a fact is a falsehood, the faith founded on it is delusion, and the doctrine raised upon it, not true. Oh! reader, put thy trust in thy Creator, and thou wilt be safe; but if thou trustest to the book called the scriptures, thou trustest to the rotten staff of fable and falsehood.”

Page 67.—“I have now, reader, gone through and examined all the passages which the four books of Matthew, Mark, Luke, and John quoted from the Old Testament, and call them prophecies of Jesus Christ. When I first sat down to this examination, I expected to find cause for some censure; but little did I expect to find them so utterly destitute of truth, and of all pretensions to it, as I have shown them to be. The practice which the writers of those books employ, is not more false than it is absurd. They state some trifling case of the person they call Jesus Christ, and then cut out a sentence from some passage of the Old Testament, and call it a prophecy of that case. But when the words thus cut out are restored to the place they are taken from, and read with the words before and after them, they give the lie to the New Testament. A short instance or two of this will suffice for the whole.”

Pages 68 and 69.—“These repeated forgeries and falsifications create a well-founded suspicion, that all the cases spoken of concerning the person called Jesus Christ are made cases—on purpose to lug in, and that very clumsily, some broken sentences from the Old Testament, and apply them as prophecies of those cases: and that so far from his being the son of God, he did not exist even as a man—that he is merely an imaginary or allegorical character, as Apollo, Hercules, Jupiter, and all the deities of antiquity were. There is no history, written at the time Jesus Christ is said to have lived, that speaks of the existence of such a person, even as a man. Did we find in

any other book, pretending to give a system of religion, the falsehoods, falsifications, contradictions, and absurdities, which are to be met with in almost every page of the Old and New Testament, all the priests of the present day, who supposed themselves capable, would triumphantly show their skill in criticism, and cry it down as a most glaring imposition. But since the books in question belong to their own trade and profession, they, or at least many of them, seek to stifle every inquiry into them, and abuse those who have the honesty and the courage to do it."

Page 71.—"They tell us that Jesus rose from the dead, and ascended into heaven. It is very easy to say so—a great lie is as easily told as a little one. But, if he had done so, those would have been the only circumstances respecting him, that would have differed from the common lot of man; and, consequently, the only case that would apply exclusively to him, as prophecy, would be some passage in the Old Testament, that foretold such things of him. But there is not a passage in the Old Testament that speaks of a person who, after being crucified, dead, and buried, should rise from the dead, and ascend into heaven. Our prophecy-mongers supply the silence the Old Testament guards upon such things, by telling us of passages they call prophecies, and that falsely so, about Joseph's dreams, old clothes, broken bones, and such like trifling stuff."

Page 84.—"As to the New Testament, if it be brought and tried by that standard which, as Middleton wisely says, God has revealed to our senses, of his almighty power and wisdom, in the creation and government of the visible universe, it will be found equally as false, paltry, and absurd, as the old."

Pages 88 and 89.—"Now had the news of salvation by Jesus Christ been inscribed on the face of the sun and the moon, in characters that all nations would have understood, the whole earth had known it in twenty-four hours, and all nations would have believed it; whereas, though it is now almost 2000 years since, as they tell us, Christ came upon earth, not a twentieth part of the people of the earth know anything of it; and among those who do, the wiser part do not believe it. I have now, reader, gone through all the passages called prophecies of Jesus Christ, and shown here is no such thing. I have examined the story, told of Jesus Christ, and compared the several circumstances of it with that revelation, which, as Middleton wisely says, God has made to us of his power and wisdom in the structure of the universe, and by which every thing ascribed to him is to be tried. The result is, that the story of Christ has not one trait either in its character, or in the means employed, that bears the least resemblance to the power and wisdom of God, as demonstrated in the creation of the universe. All the means are human means, slow, uncertain, and inadequate to the accomplishment of the end proposed, and therefore the whole is a

fabulous invention, and undeserving of credit. The priests of the present day profess to believe it. They gain their living by it, and they exclaim against something they call infidelity. I will define what it is—he that believes in the story of Christ is an infidel to God."

*Mr. Attorney General.*—That is the case for the prosecution.

*Lord Ellenborough.*—Daniel Isaac Eaton, the evidence on the part of the prosecution being now closed, it is incumbent on you to go into your defence.

*Defendant.*—My lord, as I labour under a very severe cold, I hope your lordship will permit the officer of the court to read this short address.

*Lord Ellenborough.*—I think you speak sufficiently audibly to be heard by the Court: proceed with it, therefore, yourself; if it appear necessary, the officer shall assist you.

*Defendant.*—My lord, and gentlemen of the jury; neither Providence nor education have designed me for an orator; I have neither studied for the bar nor the pulpit; kept my terms at any of the inns of court, nor pursued my studies at either of the universities—yet, gentlemen, I have received a good education, such as to make me no disgrace to any society to which I may belong. I received six years education at boarding-school, and was then sent to St. Omer's, where Mr. Burke received his education, at the Jesuits' College. It being at that time dissolved, and the Jesuits banished from France, I was under the order of Barbets, who were as intolerant as any of the Jesuits. My grandfather, who was against my being sent, as he was fearful of my becoming a Roman Catholic, was acquainted with a learned clergyman of the church of England, and got him to send me a letter of advice on that account, in which he counselled me to credit nothing about their saints, nor to be infected by their ceremonies; saying, they were the priests' inventions to delude the understanding of the people, and to fascinate their minds. And, above all things, I was desired to examine their doctrine by the Bible; for, if what they taught was not in the Bible, it was not true. I therefore made it my study to examine the Bible with their accounts of the saints; in doing which, I found the Bible so full of contradictions, and so full of wonderful things, that it induced me to examine this said Bible itself—

*Lord Ellenborough.*—Defendant, I must inform you that this is not to be made use of as an opportunity for you to revile the Christian religion; and if you persist in aspersing it, I will not only silence you, but I will animadvert on your conduct as an offence of the grossest kind, against the dignity of the Court.

*Defendant.*—My lord, I have no intention whatever of giving offence.

*Lord Ellenborough.*—If there is any thing in that paper which will serve you, read it; but I will not suffer the Christian religion to be reviled, while I sit in this Court, and possess the power of preventing it.

*Defendant.*—I believe there is nothing in what follows that can offend any person.

The defendant then proceeded to read.—“Which I have accordingly done; and now beg permission of the gentlemen of the jury, to indulge me with a patient attention, as also, my lord, to the observations I have made upon it, as being relevant to my case now in question.

“My lord, and gentlemen of the jury; I found that the Jews had been driven away, like sheep, and carried into bondage, eight or nine times, for the space, altogether, of 8 or 900 years; and that when they were taken captives to Babylon, where they were for 400 years or more, every fragment or memorial they might have had remaining, after their former captivities, of the history, whether real or fabulous, of their nation, was totally destroyed.

“I then found, that after the Babylonish captivity it was re-instated again; and it remains for us only to take notice of the nature of that divine inspiration with which those writings were composed, an account of which we have in Esdras, chap. 14, as follows:—“And the next day, a voice called me, saying, ‘Esdras, open thy mouth, and drink that I give you to drink. Then opened I my mouth, and behold he reached me a full cup, which was full as it were with water, but the colour of it was like fire. And I took it and drank; and when I had drunk of it, my heart uttered understanding, and wisdom grew in my breast, for my spirit strengthened my memory. And my mouth was opened and shut no more. The Highest gave understanding unto the five men; and they wrote the visions of the night that were told, which they knew not. And they sat forty days; and they wrote in the day, and at night they ate bread. As for me, I spake in the day, and I held not my tongue by night. In forty days, they wrote two hundred and four books. And it came to pass when the forty days were fulfilled, that the Highest spake, saying, the first that thou hast written, publish openly, that the worthy and unworthy may read it. But keep the seventy last that thou mayest deliver them only to such as are wise, among the people. For in them is the spring of understanding, the fountain of wisdom, and the stream of knowledge. And I did so.’—Can any one pretend to doubt the holiness of books written in this manner?

“Being satisfied in my mind in respect of the renovation and fresh compilation of the Bible (or Old Testament), I could the more easily account for the inconsistencies and errors I found throughout—

*Lord Ellenborough.*—I cannot permit you to proceed thus; when you come to any offensive expressions, leave them out. If there is any thing that can be useful to you (which from the tenor of the address, I fear there is not) the Court will hear it; but I cannot allow you to go on in this strain of invective.

The *Defendant* continued.—“I shall therefore take no notice of any of my juvenile remarks on the Creation, Noah’s flood, &c., but proceed to Abraham, the founder of the Jewish people.” In the eleventh chapter of Genesis, he is first mentioned as being the son of Terah. In the first verse of the twelfth chapter and following, it is said as follows:—“Now the Lord had said unto Abraham, get thee out of thy country, and from thy kindred, and from thy father’s house, unto a land that I will show thee.”—When, where, and how the Lord commanded Abraham to do those things, Esdras has forgotten to inform us. In regard to his merits as a patriarch, his falsehoods and prevarications are lasting monuments with every considerate man. With Isaac, Jacob, and their history, I do not wish to take up the time or give trouble to the Court. They are sublimely recorded in the holy book. It seems it was to Abraham that a Messiah, or Christ (as our Bibles have it) was promised. Let us examine, and if possible discern the God, who is supposed to have made this promise—

*Lord Ellenborough.*—You are evidently coming to something reprehensible, and it is necessary you should be checked.

*Defendant.*—My lord, I have only two or three sheets more to read.

*Lord Ellenborough.*—It is not the length of the address which constitutes the offence, but the matter of which it is composed. It is shocking to me, and to every Christian present.

*Defendant.*—When the address is heard out, it will be found relevant to my defence.

*Lord Ellenborough.*—You must omit those passages which cast any reflection on the Scriptures.

*Defendant.*—“For I cannot, nor ever could, perceive any, the smallest similarity, between the God of the Jews and the God of the Christians, as supposed to be worshipped in the present day—

*Lord Ellenborough.*—You must see that this is unfit for yourself to read, and for us to hear. If you go on in this manner, I must order your address to be handed to the officer, and he, when reading it, must pause, and omit every offensive sentence. I tell you once more, that I will not permit the Christian religion to be reviled. Look a little at each passage before you read it, and do not insult the Court with offensive matter.

*Defendant.*—Throughout the whole of the Jewish history, we find them worshipping various gods, till their return from their Babylonish captivity, at which time they were as obstinately tenacious of the worship of one God; therefore, Abraham, as well as his successors, worshipped the gods of their day, or any one of them, which they chose. It appeared to me, and does so still, that Abraham chose the god Mars—the god of battles, the Lord of Hosts, the vindictive god—in short, the god of war, whom his enthusiastic fancy occasioned him to imagine had appeared to him, and made those promises, as above; the which being told to his children and children's children, and through all the tribes, became the constant hope and firm belief of the whole Jewish nation. But then the Messiah was to be after the manner of the god who made the promise; that is, a warrior, to conquer for them all the surrounding nations. This god Mars, is represented by all the ancient poets, as a most ferocious being, who delighted in war and massacre. Minerva, in Homer, calls him the hair-brained, furious, and murderous god, who indiscriminately slaughtered all he came near. And thus I account for all those murders, monstrous cruelties, and barbarities of the Jews, especially while under the conduct and government of their priests—who, from the first of them to the last, constantly supported the character of the god they worshipped, by the most enormous crimes; an example of which I will here present to you. It is the 31st chapter of Numbers, the Lord commands Moses to avenge him of the Midianites; Moses selects 12,000 men for this holy enterprise, and puts a priest at their head. Thus consecrated, they proceeded on the expedition, 'and slew all the males, and took all the women of Midian prisoners or captives, with their little ones,' burnt and plundered the whole country, and carried off the booty to their camp. This exploit did not please or satisfy this merciless and furious deity, nor his leputy, Moses—

*Lord Ellenborough.*—I see that I shall be obliged to do as I have said, and exclude you from reading any more. Even in affidavits, on occasions of much less importance, where there is impertinent matter introduced, the Court will not permit it to be read; much less will they suffer such grievous and abusive observations on the Scriptures.

*Defendant.*—I do not hear what your lordship says.

*Lord Ellenborough.*—I speak clearly and distinctly; I say, if that paper contains more matter, so highly defamatory of the Christian religion as what you have already recited, I will prevent you from reading farther, and will restrain you to a parole defence; for that address appears to be most mischievous.

*Defendant.*—What your lordship objects to is confined to this paragraph.

*Lord Ellenborough.*—Then leave it out; read over the paper, and mark out such passages as are improper.

The *Defendant* here sat down.

*Lord Ellenborough.*—I will not give much time, for that paper is not drawn up like a defence; it is framed as an insult to the Court. Lay down your paper, which does not bear any semblance to a defence, and address the Court, if you please.

*Defendant.*—I conceive every part of this paper as my defence.

*Lord Ellenborough.*—It forms part of your offence against the public; but I see nothing in it like a defence.

*Defendant.*—My lord, the whole of it is in reference to my defence.

*Lord Ellenborough.*—It is in further evidence of your offence—defence it is none. And, is it to be endured, that a man, indicted for a crime, should stand up in open Court, and add to his former delinquency? Is there any thing that can assist you in that paper? If there is, the jury will hear it.

*Defendant.*—My lord, in my defence, I must necessarily say something about religion.

*Lord Ellenborough.*—But you must not defame it.

*Defendant.*—It is not my wish to do so.

*Lord Ellenborough.*—Then read only that which is decent and respectful.

*Defendant.*—What I wish here to prove is, that our God was not the God of the Jews—our's is a merciful God, and therefore could not have been the God of the Jews.

*Lord Ellenborough.*—On consideration, I believe the public will be better served by permitting every word to be read by you; and, of course, you will abide the consequences. Begin your address over again, if you please—do not miss a syllable—I am sure the country will not be injured by it.

*Defendant.*—I do not desire to begin it again.

*Lord Ellenborough.*—Go on straight forward.

*Defendant.*—"For on their arrival in the camp, Moses was wroth with the officers of the host, because they saved all the women alive. He therefore, in the name of their god, issued the atrocious order to kill every male among the little ones (although all the males were killed before), and to kill every woman that had lain with a man. But the maids they might retain. No history can furnish a parallel by the greatest tyrant that ever lived. Yet this is what is called by bishop Watson good policy, combined with mercy. Many, very many, more such narratives might be produced, and of their having forced their



prisoners to the most cruel deaths, as passing through burning brick-kilns, &c. But I want not to detain you upon this subject, but only to infer, that a merciless god cannot be the God of mercies, and consequently is not the God of the Christians. Now if the Messiah (or Christ) was to be the son of God, he must be the son of this God, and therefore we not believing in Mars the father, it cannot reasonably be expected we should believe in (Messiah) his son. The relevancy to the present business is, the conclusion to be drawn from the above, and that is, if there is no foundation for such a god as Mars, there cannot be any for the Messiah, his son.

"My lord, and gentlemen of the jury; I flatter myself that in a very few words I have satisfied you that this inhuman god of the Jews is not, nor can possibly be, the god of the Christians. I will now proceed to show you that Jesus Christ was never held to be any thing but a man, for two or three centuries after his death, and that not till the Romish religion, with all its vices, was engrafted into the sect of Christians; and when that religion became the orthodox or predominant religion, it enforced the divinity of Christ, as well as the Incarnation and Transubstantiation, upon the world. Supported by weak emperors, they spared neither the sword, nor fire, nor faggot, to make it go down, and which they have continued till within the last century. It is acknowledged by all the ancient fathers of the church, that, from the very first separation of the disciples, disputes, factions, and schisms arose among them, which to me appears impossible to have happened if this founder was a god, or even believed to be the son of God; for, in either case, their certainty of his divinity would have held them in unity—but so it happened; each set up a system of his own, and had writings called evangelical, of his own creed, or what he was pleased to record as the words of his master; but all of them adopted the name of Christians, and were equally interested in the glory of their founder, and most of the chiefs or leaders of the sects had known and seen Jesus Christ. Now among those ancient witnesses, there were many who made profession, and looked upon as false, the doctrine which we find is taught in those evangelists which remain with us at present; and the traditions which they left are quite contrary to those which we have read in our holy scriptures. In proof of which I will give you the following very short account, and will defy its being controverted.

"1st. The Gnostics, who were so ancient as to be believed by the first fathers to be known to St. Paul, agree one and all in denying what St. John says, that the word became flesh. They say that God or Christ appeared upon earth without Incarnation, without being born of a virgin, without having any body but in appearance, without any real suffering, and consequently without any resurrection. (Tillemont, vol. ii, p. 5.)

"2nd. Cerinthius was of the same opinion; and maintained that it was impossible that he could be born of a virgin. They did not doubt that Joseph was his real father; they denied the resurrection of Jesus Christ, and said he would only rise at the general resurrection with the rest of mankind. (St. Ireneus, book i, chap. 26, No. 1, pp. 11. St. Epiphanius, hom. 28, page 110.)

"3rd. The Ebionites most firmly believed that Joseph was the real father of Christ. (Tillemont, vol. iv, page 108.)

"4th. Symmaticus, who embraced that sect, wrote against the genealogy which St. Matthew has given of Jesus Christ. Basilide said, that Jesus was not incarnated, but was only covered with the appearance of man; that at the time of the passion he had taken the appearance of St. Simon the Cirenian, and gave him his. (Tillemont, vol. ii, page 221. Epiphanius, hom. 24, p. 70, 71. Theodoret. Hereticorum Fabularum, book 1, page 195.)

"5th. The Carpocratians believed that Jesus Christ was got by Joseph, and that he was like other men. Some among them made no scruple of saying they equalled him in goodness, and even that they surpassed him. They did not admit of the resurrection of the body. (Tillemont, vol. ii, p. 257. Ireneus, book i, chap. 25.)

"6th. The Cainists, conformable in these respects, to the opinions of the others, spoke also of the law of Moses with the utmost contempt: they assured us, that it had for a first principle a bad intelligence, and they did not believe Jesus Christ came to accomplish any thing, but was merely a man of great virtue and goodness. (Tillemont, vol. ii, p. 47.)

"7th. Marcion taught that our evangelists were full of falsehoods, and that they the Marcionists were more perfect and true than those who had left us in their writings, the history of Jesus Christ. "Semetipsum esse veraciorum quam sunt hi qui tradiderunt evangelium apostoli, suasit discipulis suis; non evangelium sed evangelii particulam tradens eis." In this manner speaks St. Ireneus, vol. i, p. 306. (Epiphanius, hom. 42, p. 309.)

"8th. The Aloges, Theodores, and Theodotians, rejected with contempt the evangelists, particularly St. John; they spoke of them as a work of lies. (Tillemont, vol. ii, p. 438. St. Epiphanius, hom. 34, p. 472 and 463, No. 5, p. 424.)

"9th. The Valentinians' evangelical writings were quite different from those we have at present. "Ut nec evangelium quidem sit apud eos sine blasphemis," says St. Ireneus, book iii, chap. 11, p. 192.

"In short, the ancient Christians maintained that the evangelists (that is the sacred writings) ought to be often corrected and revised. "Se esse emendatores apostolorum." It is in this manner St. Ireneus speaks of them, book iii, p. 174.

"Behold here, gentlemen of the jury, a prodigious number of the first Christians, who

declare that what is in our evangelists is contrary to historical truth, and who combat and oppose, among other articles, the two most capital points of the Catholic faith—that Jesus Christ was born in a different manner, or by different means, from the rest of mankind; and that he was raised from the dead, or the resurrection.

"Gentlemen, you will please to remark that those witnesses who declare against the creeds and belief of the present day (or as we at present are instructed to believe) were either contemporary with the apostles, as the Gnostics, the Esenians, the Ebionites, and Cerinthians, or had their history of Jesus Christ, from those who had been perfectly instructed. For Basilide had for his master, or instructor, Glaucia, the disciple and interpreter of St. Peter; and Valentine had been brought up by Theodat, the disciple of St. Paul. (St. Clement of Alexandria, book vii, p. 761).

"Another very considerable difficulty occurs against our evangelists, which is, that our most ancient fathers, even among the ruling sect, never knew or heard of the four scriptures or evangelists that remain among us Christians; whilst they cite frequently, and with the greatest belief and entire confidence, the apocryphal books, as their greatest proofs and authority.

"Note, gentlemen of the jury, that every book, writing, or tradition, that did not square or agree with the system of religion which the orthodox (the Roman Catholic) were then forming, were deemed apocryphal; that is to say, spurious.

"Gentlemen of the jury, fearful of offending you, as likewise my lord Ellenborough, by detaining you longer, I will now decline any further proof of the invalidity of the four evangelists, Matthew, Mark, Luke, and John; as I think, and with the greatest sincerity hope, I have said already enough to convince you that they were imposed upon us, by that whore of Babylon (as she is called) the church of Rome. However, I will just state by what further evidence I could prove their invalidity—by St. Clement of Alexandria; by Julius Cassian, an author of the second century, by St. Ignatius, by Eusebius, by St. Jerome, and every father of the church till Justin Martyr, who was the first that mentions them. From Justin till the time of St. Clement they were cited, or spoke of, with the rest. At length, being properly purged, to the liking of the orthodox, they totally expelled and eclipsed the others; not but there were some who in succeeding times have placed their confidence in them.

"It is a thing worthy of remark and great attention, that although the first fathers of the church make frequent use and mention of the (now called) false evangelists, never did any of them once mention those which remain with us. Matthew, Mark, Luke, and John, are neither cited by St. Barnaby, nor by St. Clement, nor by St. Ignatius, nor in short by any of the writers of the first centuries. St. Justin is the first who had any knowledge of those writings; and it also is a remarkable circum-

stance that the silence which the learned Dr. Dodwell has observed to have kept on this subject (in his Treatise on St. Ireneus, p. 67), is a still greater proof against the antiquity of the evangelists which we now have, and that the fathers only knew and quoted others which the contempt of the succeeding ages has caused to disappear.

"Thus, my lord, and gentlemen of the jury, I have endeavoured to show that the God which was worshipped by the Jews, was not, nor could possibly be, the God which we worship. The inference and conclusion which I draw is, that as the promises of a Messiah, or Christ, came from this God, they can have no claim upon us whatever.

"In the next place, I have endeavoured to show that the first Christians and fathers of the church only looked upon Jesus Christ as an exceedingly virtuous good man, but nothing supernatural or divine; and I will now state to you that Origen was very near losing the honour of his saintship on account of his believing Christ was only a man. And it appears through all the Testament that he was esteemed a mere man by his family and neighbours.

"I now come, gentlemen, to the proofs concerning the evangelists, Matthew, Mark, Luke, and John) of their being of modern date, and unknown to the first Christians; and in the "*Historia Christianorum ante Constantinum*," you will find that "they were four clerks, scribes, or writers, that the cabal or party of the orthodox put into the office, for attesting the different writings and traditions concerning Jesus Christ, and that each had his name affixed to his writing when he had done; and that it was a long time before they could bring any into their belief, indeed not till the rest of the writings were almost totally destroyed." In short, it is impossible to conceive they could have had existence for two or three hundred years, and not be quoted or known to any of the fathers or writers in that time, who must and did quote continually from the others.

"Any further attempt to argue this case, will, I conceive, be superfluous; I shall therefore beg to state what concerns the publication, and what was my opinion of it when I received it. Having perused it, I found it to my conception a very fair book as to language, and no fairer book in arguing can possibly be; for it is only by comparison of one passage with another; and then ascertaining the difference, shewing its errors, its falsehoods, its misapplications, and the erroneous conclusions which have been drawn. If such is not fair argument, I know not what is. So far from the book being against religion, it in no part indicates even a design of acting against any sect: it only seeks to find the truth; and religion is much better secured with truth, than it can be, in the long run, by error and falsehood.

"If priests are afraid of losing their good livings, by errors, or wilful misconstructions

being found out, I would advise them to be the first to detect them; then they would have all the merit of it, and their occupation and salary would still go on the same, and they would have the satisfaction of deserving what they enjoy. Instead of preaching so as not to be understood, let them preach moral and social duties to mankind, that will make mankind better; but what is now called preaching is little more in some places than lulling to sleep, and in others it is either farcical or fanatical. There are but few sermons of sound morality or social duties preached either in town or country, which is the cause of the increase of Methodism, or of meetings being preferred to churches, for these, they say, are the gospel preachers!"

*Defendant.*—That my lord, is the whole.

*Lord Ellenborough.*—Will you call any witnesses?

*Defendant.*—No, my lord. May I now address the jury?

*Lord Ellenborough.*—You may.

*Defendant.*—Gentlemen of the jury; so far from wishing or harbouring any intention to offend the laws of my country by this publication, I think it necessary to state, that it was handed about in London four or five years before I had it from America; and for six or seven years it had been in circulation over that vast continent, where they are far more strict in the observance of religious duties, than we are in this country. So much so, that in many of the states they will not permit an individual to travel on Sundays. I myself have been stopped in the course of a journey, and obliged to wait till after one o'clock, when divine service was over.

If this work was allowed in a country so religious, I thought we had a right to publish it here, as we boast ourselves to be the freest and most liberal nation on earth; but I had not exposed this book for sale three weeks—nay, I believe, not three days, when this information was filed against me.

I have already undergone six prosecutions, I was expatriated from my country for upwards of three years, which I passed in America—Two thousand eight hundred pounds worth of my property was burnt by order of Mr. White, solicitor to the treasury—I have had to pay 286*l.* to save my furniture when seized on—I have suffered fifteen months solitary imprisonment, and then received his majesty's pardon. Surely, when I have endured so much, it must naturally be supposed that I would not willingly have incurred fresh danger, or done any thing to irritate the government of the country.

Having already lost so much, it was more reasonable to believe, that if any member of the legal profession had pointed out to me any thing in the pamphlet which militated against the law, that I would have desisted from pub-

lishing it. And, gentlemen of the jury, I would inquire of your candour and justice, how I can fairly be implicated in the crime said to attach to the works of another person? Here also I beg leave to observe, that Mr. Paine says nothing whatever against the Christian religion—he only objects to the historical parts of the scripture relative to Christ.

Now, gentlemen, permit me to read one of the passages which has been selected from the work, and on which great stress has been laid, as it forms one of the counts of the information. If the author had positively said, as has been argued, "that all the cases spoken of concerning the person called Jesus Christ are made cases, on purpose to lug in, and that very clumsily, some broken sentences from the Old Testament, and apply them as prophecies of those cases; and that so far from his being the son of God, he did not exist even as a man, but is merely an imaginary or allegorical character"—I should deem him a bad man, for asserting those things as matter of fact. But that is not the case—to understand this passage, we must examine the context—and what do we then find? That "these repeated forgeries and falsifications create a well-founded suspicion," "that all the cases spoken of concerning the person called Jesus Christ, are made cases," &c.—It is not here affirmed that there was no Christ—the author only speaks of certain circumstances as creating a suspicion on the subject.—It is not advanced as a real fact; and, throughout the book, you cannot find a single word levelled at religion.

I have now explained the nature of the case as far as respects myself; and, I can safely say, if I conceived there had been any thing improper in the work, I would not have published it, or any part of it. But, I think it extremely hard, when it has been printed and disseminated among a people speaking our own language, and who follow our religion far more strictly than we do, without any attempt being made on the part of the government to suppress it, that the moment it is published here, a man should be liable to incur all the pains and penalties of the law.

As to blasphemy, I never was guilty of it—if it could be proved, that I ever spoke against the being or divinity of God, then, indeed, I might be deemed a fit object for punishment. I certainly am a friend to free and fair discussion on religious topics, but not more so than many eminent divines have been. In proof of this, I request permission to read a passage from the works of the celebrated Doctor Middleton, vol. ii. p. 312 and 313, 8vo. edition. The Doctor, it appears, had found fault with one of his contemporaries for what he conceived to be a too free inquiry into certain articles of faith, for which he seemed to think the author deserved punishment; but this hasty sentence he afterwards ingeniously retracted, in the following words—"This then my firm principle and persuasion (says this excellent author), that a free inquiry into all

points of religion is always useful and beneficial; and, for that reason never to be punished or prohibited. It opens the minds, and reforms the manners of the people; makes them reasonable, sociable, governable; easy to such as differ from them, and as little scandalised at the different opinions, as the different complexion of their neighbour; whereas the restraint of this liberty, and the imposition of systems and articles, that must not be called in question, nourishes a churlish spirit of bigotry, uncharitableness, enthusiasm, which no civil power can moderate; a spirit that has so oft involved mankind in wars and bloodshed, and by turns endangered the ruin of every Christian country in the world. If, therefore, in my argument against "Christianity as old," &c. I am understood to recommend or suggest, in any manner, the reasonableness of punishing the author, I disclaim and avow it, as contrary to my intention and my principles. All such punishment is against the interest of society, the interest of truth, the interest of religion itself; which, as it could not have been propagated at first but by a liberty of thinking, writing, preaching; so cannot be preserved in its purity, but by the very same means." Hereby this noble defence of religious liberty, in its full extent, makes amplea mends for the above-mentioned mistake, which the Doctor had committed. I shall now, gentlemen, leave my case in your hands.

*The Defendant* was then handing up twelve copies of the publication to the jury-box, but was prevented by the Court; and, on the suggestion of Mr. Garrow, lord Ellenborough gave directions that they should be taken by one of the officers.

*Mr. Attorney General.*—My lord, I rise only to assert my right to reply; for I shall not give any importance to that which has fallen from the defendant, by making any observations on it.

#### SUMMING UP.

*Lord Ellenborough.*—Gentlemen of the jury, considering whom I am addressing—twelve Christian men, who have lately sworn on the holy evangelists—it is scarcely necessary to make any observation on this case. To ask you, whether that, under the sanction of which the oaths you have taken were administered, has any validity, would be as improper as it is uncalled for. Can any person be weak enough, for a moment, to believe, that this man has proved to your satisfaction and to mine, as he has done me the honour to assert, that this work is not only harmless but praiseworthy? While he was reading his address I felt more pain in the execution of my duty, than it is possible for me to express. That paper, from the beginning to the end, was the most opprobrious invective against what we have been always accustomed to regard as holy and sacred—the religion of our country.

Several cases have been cited to mark the

magnitude of the offence. Lords Hale and Raymond have been quoted; and at a more recent period, lord Kenyon, as expressly stating that the Christian religion was the law of the land, and must be protected as the law. Beside the doctrine thus laid down, there are several statutes on the subject, particularly one made in the reign of king William, by which the denying of the Christian religion is punishable by severe penalties; and it is the humanity of those who prosecute, which has induced them not to indict under that act, the pains and penalties attached to which are much greater than those of the common law.

I need not ask you, gentlemen, to develop the defendant's meaning and intention: on that subject he has informed you himself, in coarser terms than even those made use of by the author; if, indeed, any thing more coarse could fall from the pen of any man. The whole object of the work is clearly summed up in the concluding sentence, which has been read by the attorney-general, and which cannot leave a doubt on your minds as to the pernicious tendency of the publication.

The defendant has told us, that the work was current in America, and had not been visited by any prosecution in that country. It is for them to administer the affairs of religion as a free state has a right to do; but their conduct is not to influence us. And, in a free country, where religion is fenced round by the laws, and where that religion depends on the doctrines which are derived from the sacred writings, to deny the truth of the book which is the foundation of our faith has never been permitted. I am sure no impunity will be given to such an offence by the verdict you will return this day.

Gentlemen, I leave it to you as twelve christian men, to decide whether this is not a most blasphemous and impious libel.

*Mr. Attorney General.*—I pray, my lord, the defendant may not be suffered to leave the court.

*Lord Ellenborough.*—Let the tipstaff see that the defendant does not quit the court.

The jury returned a verdict of GUILTY!

*Mr. Attorney General.*—I pray that the defendant may be committed.

*Lord Ellenborough.*—Let him be committed to Newgate.

On Thursday the 30th of April, 1812, the defendant was brought up for judgment, when the information and report of the trial being read, the affidavits of five persons were also read; which stated, that the said several deponents had known Daniel Isaac Eaton, the defendant, for different spaces of time, some of them for many years; and they have and each of them has had many opportunities of observing the conduct of the said D. I. Eaton; and notwithstanding he the said Daniel Isaac

Eaton has sold pamphlets of a political nature formerly, yet that they the said deponents have not, nor has either of them, known him to conduct himself in any other than in the most peaceable manner; and always observed him, in conversation with these deponents as well as many others, to avoid violent discussions of any kind, as well in matters of politics as in religion, so that he the said Daniel Isaac Eaton appeared to each of the said deponents not to endeavour, at the respective times when either of them have so as aforesaid been in conversation, to persuade these deponents or either of them or any other person or persons to adopt his own particular opinions whatever they might be; and that the said Daniel Isaac Eaton hath always in the estimation of all these deponents borne the character of a charitable, honest, faithful, and peaceable man, in his personal deportment and coaversion with these deponents and all others, to the best of these deponents' personal observation, knowledge, and belief, as well as by common repute.

The defendant next put in the following affidavit:—

"Daniel Isaac Eaton, late of Ave Maria-lane, in the city of London, bookseller, but now a prisoner in his majesty's gaol of Newgate, maketh oath and saith, that whereas he is found guilty of publishing a libel which in construction of law is against the peace of our sovereign lord the king, his crown and dignity, yet in truth and in fact he the said Daniel Isaac Eaton published the same libel in error, and mistake of the law; and had in fact no evil intention therein, and hath always been in fact a peaceable subject of our said lord the king, except only in construction of law, as respects the matter or matters for which he hath been prosecuted; and that having been personally known to his present majesty, and his brother the late Edward duke of York, and having received many kind favours from his said majesty, he hath never harboured an ill thought against him, but on the contrary thereof owes to him, and will ever bear to him, the most grateful affection and regard as a subject of his realm; and more especially seeing that it was by his majesty's special grace and favour, granted upon his personal application, that he the said Daniel Isaac Eaton hath been pardoned and relieved from an outlawry which had been adjudged against him; that although the said libel of which he is convicted is charged and found by law to be of an evil tendency, and to the displeasure of Almighty God, yet the said Daniel Isaac Eaton erroneously conceived to the contrary; and that because in many passages thereof the divine authority of his creator is upheld with all possible reverence and respect; and good morals are recommended as the law of God revealed in the natural exemplification of his divine power.

"And he the said Daniel Isaac Eaton saith, that although in the said libel the authenticity

of the gospel history is questioned and denied, yet the moral doctrine of the gospels is particularly described as excellent. That he the said Daniel Isaac Eaton so published the said libel in the mistaken notion that it was lawful to discuss the authenticity of any passage in the Holy Scriptures, and to draw any inference therefrom which appeared agreeable to natural reason, and that he had believed the same to be the practice of many of the divines of the church of England and others, as well in their preaching as in their writings; and that he hath read in the works of the divines and of the ancient fathers many discussions concerning the divine nature of Jesus Christ, and the authenticity of divers passages in the holy gospels. That true it is, the said libel contains divers passages particularly set forth in the information whereon he stands convicted, in which the said holy gospels are spoken of in terms of very gross disrespect, which he regrets much to have been used by the author; but that not being himself the author of the said libel, he did not think himself at liberty to alter the language thereof, but was bound to suffer the author to speak in and to be judged by his own words; that he the said Daniel Isaac Eaton was the more induced to form such erroneous opinions as aforesaid, inasmuch as the said libel hath to his certain knowledge been published without any legal censure in the United States of America, in which country the law concerning libel is the same with the law of England, as he hath been informed and believes; and that the Christian religion is there as in England in full force.

"And he the said Daniel Isaac Eaton farther saith, that he hath been educated in the Protestant religion, according to the rites of the church of England, and hath never professed nor practised any other religious rites and ceremonies whatsoever, and hath always earnestly endeavoured to live in peace and charity with all men, to be just in all his dealings, and neither by his conversation nor example, to encourage dishonest, fraudulent, unjust, or cruel actions; that he the said Daniel Isaac Eaton had no intention of offending against the laws in the publication of the said libel, but published the same in error of the law, and ignorance of any evil tendency therein, and in the belief that the truth of the Christian religion could not be injured nor affected by any writing whatsoever, and in the expectation that the pamphlet would be answered by other writings, and the truth be made the more manifest.

"And he the said Daniel Isaac Eaton farther saith, that two thousand eight hundred pounds worth of books, bought and packed up for America, were on a former occasion, burned by order of Mr. White, solicitor to the Treasury; and two hundred and eighty-six pounds taken to release his furniture and other goods, by which, and more recent misfortunes, he is become reduced in his pecuniary circumstances,

"And the said Daniel Isaac Eaton saith, that having brought from America a recipe for the manufacture of a certain soap, which is a specific and cure for scorbatic eruptions, which he hath lately sold with public approbation and increase of sale, for his support and maintenance, he had designed in future to desist wholly from the publication and sale of political pamphlets. And farther, this deponent saith, that he is of the age of sixty, very infirm in body, as well as from an affliction of the stone, as also from an obstinate and inveterate cough, which deprives him of nightly rest, and appears to have fixed upon his lungs, and which makes him greatly apprehensive that his life will be endangered by close confinement. And he humbly prays the mercy of the Court in compassion to his infirmities, and to the weakness of human nature, and the errors of human judgment."

Mr. Prince Smith then addressed the Court on behalf of the defendant in mitigation of punishment. With respect to the passages in the libel which had been read, he could only entertain for them the same sentiments of abhorrence which every true Christian expressed; but with regard to the defendant, he was placed in a situation which gave him a right to demand professional assistance from the gentlemen of the bar: and having undertaken his defence, as far as was consistent with the character of a Christian and an advocate, he should endeavour to defend him to the best of his ability; for the privilege of the bar was the right of the subject, and when the bar failed in its free spirit, and its duty to a client, the liberty of the subject would soon fall. His task, notwithstanding this sense of his duty, was a very arduous one—it was not his intention, however, to impeach either the law or the verdict.

As to the law, it was clearly laid down and established; nor could he hope their lordships would be induced to overturn the cases upon which it was founded. He, therefore, did not deny the existence or the propriety of the law upon which the information was filed; but all human laws were founded upon circumstances, and changed with the efflux of time, and the character and manners of a people. If they were not wholly abrogated, they either ceased to be enforced at all, or were enforced with less severity. In times of popery, the Court proceeded against all persons who disputed any of the doctrines of the church with the utmost rigour, even unto death—they proceeded in this view with mistaken ideas of charity, and punished man not so much for the correction of his morals as the salvation of his soul—they proceeded against heretics with the fire and stake here, to save them from eternal fire hereafter! In later times the *vis et heretica comburendo* had been abolished, and principles of toleration necessarily prevailed. The Court was the guardian of the morals of the people, and not the keeper of their souls—it inflicted punishment upon the commission of fraud, in-

justice, and other temporal crimes; in this character it proceeded in cases of libel, and the inquiry now was, how far the public morals might be injured, and the public peace be invaded by the dissemination of the principles contained in this book.

The learned counsel then proceeded to show, that during the last century great latitude had been allowed to the discussion of religious doctrines, even in defiance of the statutes themselves. Some sects of Christians denied the divine nature of Christ, and others would not profess their belief in the personality of the Holy Ghost—all of which was against the Toleration act. In earlier times Jews and infidels were considered with such hatred and animosity, that the king could make no league with an infidel prince. In the present days, commerce had extended our connections with all parts of the world, and forty millions of subjects in the East, who denied the Christian religion, and believed in an incarnation 800 years older than Moses, were the subjects of the king of England. The pamphlet before the Court was occupied in considering the various prophecies of Christ to be found in the Old Testament, and a similar investigation had employed the pens of many learned and pious divines. Professor Hey, in his theological lectures, speaking of such of the prophecies as are referred to in the New Testament, which are in fact all those discussed by Paine, says of the phrase—"that it might be fulfilled which was written"—that this may in many cases be considered as equivalent to the French phrase "*a propos*," and to be employed merely as an introduction to a quotation, just as divines quote the scriptures or any other book, for ornament or illustration.

The pamphlet closed with Paine's opinion of a future state, in which he professes a belief of an existence after death, and, to a certain extent, of a state of rewards and punishments; and religion was nothing more than the pursuit of moral conduct founded on the belief of a future state.

The learned counsel strongly contended for the right of free discussion in matters of religion, and said, that notwithstanding all the inquiries of this nature which had been permitted, the Christian religion had only flourished the more in proportion as it had been attacked, verifying the words of our Saviour, who says, "on this rock have I built my church, and the gates of hell shall not prevail against it."

The question then for the Court was, how far they would enforce the law against the defendant, in charity to his errors: and since the Christian religion was the law of the land, would not the Court, by showing mercy to the defendant, act in furtherance of its most noble doctrine, which was charity. It was indeed impossible for the Court to feel Christianity, without treating the errors of opinion with mercy and with humility. It was quite impossible to maintain the fear of God by force; and religion ceased to be the fear of God when it became the fear of man.

The endeavours of all questioners of the divine revelation, from lord Herbert of Cherbury to Mr. Gibbon—the endeavours of Hume—were to insinuate Deism by all the arts of philosophy, rhetoric, and declamation; and the question whether less danger was to be apprehended from such writers than from Paine was easily decided. It was a question between the vulgarity and abuse of the latter, and the artful sophistry of Gibbon, the specious philosophy of Hume, and the witty sarcasms of Voltaire.

The unfortunate writer before the Court had published two former parts of this work, which the learned counsel had read only in the admirable Apology for the Bible by bishop Watson; and which had doubtless tended more to cure infidelity than any legal prosecution on record. In the spirit of free inquiry thus was good deduced out of evil; and in this spirit, and with this belief of its utility, had the divines of later times promoted the free discussion of revelation, instead of (like the Romish church) calling upon the secular arm to protect revelation, and had thus endeavoured to convince by argument rather than by force.

The informations of the attorney-general seemed to be so denominated in derision of all knowledge, and were a complete bar to all free inquiry. An answer to this book were rather to have been wished, than that it should call down the vengeance of the law. By such a means Christianity would have been well served; and it would show to the world as if no answer could be given to this book, that the attorney-general was obliged to appeal to the strong arm of the law.

Many of Mr. Paine's arguments as to the prophecies might be admitted; but it did not follow because some quotations from the Old Testament were not prophecies of the New, that all the prophecies in the Bible were false: there still remained the testimony of miracles, and the internal evidence of the truth of Christianity.

As to the infidelity of Gibbon, which was undoubted, the Rev. Mr. Lesley blamed him only for his disingenuousness; and said, that if he disbelieved the gospel, he had a right to turn it into contempt; but he had no right to assume the garb of a Christian. Dr. Hey also, speaking of Woolston, who had been prosecuted in Lord Raymond's time, said that he was a man of learning and probity, and that it would have reflected more honour upon our religion and upon our civil government to have committed him to the care of his relations and friends, than to let him support himself in prison by the sale of his writings, and end his days in confinement.

The learned counsel concluded his quotations with the opinions of the late bishop of Carlisle (lord Ellenborough's father), a writer in whose praise he would not venture to speak, lest he should be suspected of flattery or artifice. This learned and pious divine contended strongly for the necessity of tolerating infide-

lity, and put the heretical turn in general which then prevailed, upon the same footing with particular heresies.

If the counsel addressed their lordships merely as lawyers, he should be throwing these arguments as chaff before the wind; but he appealed to their feelings as men, and as philosophers acquainted with the human mind, and with the influence of religion. He had not been present at the trial, but he had understood that the attorney-general had claimed some merit for leniency, in not prosecuting the defendant upon the statute of the 9th and 10th of William 3, c. 23. If he had done so, their lordships would have had no discretion in apportioning the punishment; but here, on the common law prosecution, they were open to every argument of humanity, feeling, and philosophy.

The information charged that this libel was published against the king's crown and dignity; but that infidelity did not militate with the crown and dignity of the sovereign, was proved by the many millions in the east, who worshipped God out of the pale of Christianity, but who nevertheless added so materially to the crown and dignity of the king of England. If Deists were tolerated and formed into a sect, would any injury be sustained by those morals over which the Court was guardian; and to preserve which it was armed with its powers of punishing? Many who had written with as much audacity, but more artifice than the defendant, had gone unpunished. If Paine had said that he who believed in Christianity was an infidel to nature, Hume had asserted, that he who believed in miracles believed against all common sense, and (to use a legal phrase) "after possibility of belief extinct."

The learned counsel then adverted to the infidel tendency of Lucretius, a work which had corrupted Bolingbroke and Pope, and had given rise to that deistical poem, the *Essay on Man*; and yet it was but the other day that he saw a new translation of the whole poem of Lucretius, the most argumentative and inductive work against the immortality of the soul, and the providence of the Almighty, that had ever appeared, and one which had afforded a foundation for all the sophistry of the ablest Deists of modern times; yet this was advertized under the sanction of the attorney-general's name as a subscriber.

The days of burning were now over, and Christianity was in so flourishing a condition, that a whole host of extra divines had dispersed themselves on missions of that gospel all over the world. Here the learned counsel argued in favour of the free and full toleration of all religious opinions, as well upon the ground of natural right as of expediency and the impossibility of enforcing religious opinions by judicial prosecutions.

Every man, said the learned counsel, thinks he has a right by nature, granted at his birth, to worship God with his whole heart, and after his own fashion; and if he does not worship

him after his own free will, believe me, my lords, he will not worship him at all. With the rights of conscience man ought not to interfere, for he can neither interfere with justice nor with success. The awe of temporal power can never come in aid of divine authority. The fear of God is never the fear of man. The love of God is like the love of all human beings, free, or it ceases to be love; and when the secular arm seizes on the thunder of Heaven to enforce creeds and opinions, it finds itself only powerful to produce distress and misery—powerful enough at all times to destroy whom God has created, but absolutely impotent and unavailing to convince whom God has not vouchsafed to instruct by the gift of his divine grace, which alone can inspire with faith, and produce righteousness unto salvation.

The learned counsel concluded by recommending the defendant to the Christian charity of the Court, and implored their lordships in furtherance of the true spirit of Christianity—in pity to the errors and the frailties of human nature—in condescension to the claims of free conscience—if they found themselves bound to draw the sword of the law, and with it (on the call of his majesty's attorney-general) to strike the unhappy defendant, that at least they would smite him gently.

Mr. Attorney General expressed his satisfaction (having strongly in his recollection the manner in which the defendant conducted his defence at the trial), that no gentleman at the bar had been found, who had thought it necessary upon this occasion to profess himself not a Christian: for certainly if the defendant could have found one who was not, he would have given him the preference.

The learned gentleman had entered into a long discussion upon the origin of the doctrines and opinions of learned writers, which he should not take the trouble of answering; and had charged him with adopting the more rigorous course against the defendant. Had the learned gentleman taken the trouble to make himself acquainted with what passed upon the trial, he would have found he (the attorney-general) had not been so unmerciful, and that he had been indicted at common law.

The learned gentleman had asserted, with more smartness than foundation in fact, that the attorney-general, by his informations, but up the gates of knowledge. If he were to indict a man for murder, he should certainly shut out from the inquiry, whether murder were or were not a crime, but not whether the accused were guilty or not. As to the gentleman's opinion of the most judicious manner of treating infidel writers, with which

he had favoured the Court, he might, with all his knowledge, have found that there was not a syllable in the pamphlet which had not been drawn from the very dregs of infidelity, and which had not been answered over and over again.

The arguments of other infidels were nothing to this question: where one man might be injured by the works alluded to, 500 would be by this pamphlet. Hume was read only by men of literary habits; and his doctrines would, with men of sound understanding, and reasoning minds, convey their antidote with them. The great fault of these writers was, to carry their idea of God to the perfection of human intellect, and then to disbelieve all revelation from heaven, which was not perfectly intelligible to that portion of intellect which they possessed. It was the vanity of man against the omnipotence and omniscience of God.

It rested with the Court to determine the punishment for this offence; as it regarded the peace of the country; and if there were no authorities on the subject, reason and principle must decide, that this was an offence against that peace which it had a direct tendency to disturb.

The defendant had imported from America, and published here, a pamphlet which called the Christian religion a fable, its author an impostor, and its teachers designing and interested villains, supporting themselves upon a mere system of fraud.

The Court had heard the libel; they would form their own judgment, and act upon it. With respect to his being the favourer of those doctrines, by having subscribed to a certain work, he would not let it go forth to the world, that while he was praying judgment against the defendant, he was sanctioning his doctrines. The fact was, he had seen a list of subscribers to Dr. Busby's work, containing the names of some of the most learned and enlightened men of the country, and as an encourager and patron of literature, had put his name down—

Lord *Ellenborough* here interrupted the attorney-general, observing, that he need not give himself the trouble of explaining; for as well might it be said, that every gentleman who subscribed to a new edition of the classics, was the favourer of these doctrines.

After some further observations, the Court ordered the defendant to be recommitted to Newgate, and brought up again for final judgment on Friday, May 15, 1812; on which day the Court sentenced him to be imprisoned EIGHTEEN MONTHS in his Majesty's gaol of Newgate, and to stand in the PILLORY between the hours of twelve and two, once within a month.



690. Proceedings under Commissions of Oyer and Terminer and Gaol Delivery, for the County of York, held at the Castle of York, before Sir Alexander Thomson, Knight, one of the Barons of the Exchequer; and Sir Simon Le Blanc, Knight, one of the Justices of the Court of King's Bench; from the 2nd to the 12th of January: 53 GEORGE III. A. D. 1813.

[INTRODUCTION.\*]

[THE object of this publication is, to afford authentic information on a subject which has been greatly, and it is to be feared purposely, misrepresented; namely, the real state of the manufacturing districts of the North of England, in regard to the disturbances which have lately prevailed there. With the view of correcting the misconceptions which have existed on this subject, it appeared that nothing could be so unexceptionable and so satisfactory, as an authentic report of what was proved upon oath before the learned judges, who, under the authority of a Special Commission, lately sat at York, for the trial of the crimes committed in the West Riding of that county; and, in a great measure, by witnesses who were more or less implicated in the outrages which were perpetrated.

At the same time it seemed desirable to record the valuable legal doctrines pronounced by the learned judges who presided at the trials, and which therefore have been preserved entire; although some of them convey more instruction to the lawyer than to the general reader.

It may not be amiss here to observe, that as both the judges rehearsed the whole of the evidence in summing up the cases to the jury, it appeared to be unnecessary to swell the volume by giving it also in the form of question and answer.

Although it is conceived that the very clear statements, by which the several cases were developed to the jury, will sufficiently explain to the reader the state of the immediate neighbourhood in which the unhappy scenes were acted, yet it may neither be useless nor uninteresting to give a concise account of the circumstances and causes which led to a crisis, such as has seldom been exhibited, and never can be long suffered to subsist in a civilized country; a crisis little short of open rebellion.

\* From the original report of these proceedings, printed at the time, under the authority of government, but not sold.

In the spring of the year 1811, disputes arose between the masters and journeymen employed in the trade of weaving stockings and lace, which is carried on in the south-western part of Nottinghamshire, and the adjacent parts of Derbyshire and Leicestershire; and without entering into the particulars of those disputes, which would be beside the present design, suffice it to state, that in the month of November 1811, the discontents had arisen to such a height, that a mob, consisting of several hundred persons, assembled at Sutton in Ashfield in open day, and broke the stocking and lace frames of various obnoxious manufacturers. Before this mob was separated, some of the ringleaders were taken into custody by a party of yeomanry cavalry, and were afterwards committed by the magistrates to Nottingham gaol. From this disaster the malcontents learnt caution; and as the frames used in this manufacture are of a very delicate texture, and rendered useless by a single blow from a heavy instrument, they seldom, from this time, carried on the work of destruction openly, or in large bodies, but watched the opportunity of effecting their purpose individually, or, in small parties, under cover of the night, and in spots where the machinery was least protected. This purpose was aided by the circumstances in which the manufacture is carried on in the vicinity of Nottingham. The frames, which are of considerable value, commonly belong, not to the persons by whom they are worked, but either to the master manufacturers, or to individuals unconnected with the trade, who let them to the artisans at a weekly rent; and thus the frames are scattered in detached houses about the country, and are usually in the custody of persons who have no interest in protecting them from violence.

In the neighbourhood of Nottingham, which was the focus of turbulence, the malcontents organized themselves into regular bodies, and held nocturnal meetings, at which their future plans were arranged. And, probably with the view of inspiring their adherents with confidence, they gave out, that they were under the command of

one leader, whom they designated by the fictitious name of Ned Ludd, or general Ludd, calling themselves Ludds, Ludders, or Luddites. There is no reason to believe that there was, in truth, any one leader. In each district where the disaffection prevailed, the most aspiring man assumed the local superiority, and became the general Ludd of his own district. These petty tyrants, doubtless, took their tone from the centre of the operations, but not (so far as has been traced) from any individual.

Under this system the Luddites, in the winter months, destroyed a very considerable number of stocking and lace frames, and infused such a terror into the owners of all, as to drive them to the precaution of removing them from the villages and lone houses, and placing them for security in warehouses, where they could be protected from injury. The evils, which the misguided journeymen proposed to remedy by their measures, were, of necessity, much aggravated by throwing a greater number of hands out of work.

Although detection was difficult, from the mode in which the offences were committed, yet it did in some instances take place; and in the calendar of prisoners for trial at the Nottingham Spring Assizes, there were 18 committed for offences connected with the existing disturbances in that county.

As the intimidation of the master manufacturers and owners of frames was found to render them extremely averse to prosecution, and it was therefore little likely that any prosecution would in their hands be carried on with effect, it was deemed, by the government, to be absolutely necessary for the public good, that the course of justice should be opened, by taking the indictments out of the hands of the nominal prosecutors. And accordingly the whole of the causes were conducted by the counsel for the crown. It must be admitted that great lenity was shown in these prosecutions. None of the prisoners were capitally convicted; and in many of the cases, where they were found guilty of felonies within the benefit of clergy, the punishment awarded fell far short of that which the law would have authorized. How far this lenity was misplaced, will be seen in the sequel.

Whether the Luddites were encouraged by the mildness of the punishments which their confederates received at Nottingham, or by doctrines which were broached about the same period, casting doubts on the moral guilt of destroying machinery, or from any other cause; certain it is, that immediately after the Nottingham Assizes in March 1812, a spirit of discontent, which had for some weeks been brooding in other manufacturing districts of the North of England, was ripened into

acts of open outrage; and we find that the south-western part of Yorkshire, and the contiguous parts of Lancashire, and Cheshire, in which the principal manufactories of woollen and cotton are established, immediately caught the flame of Luddism. Not only did the disaffected assume the appellation of the same supposed leader, but they followed the example of their Nottinghamshire brethren, in holding nocturnal meetings, dividing themselves into societies which communicated with each other by delegates, exacting a tribute from all manufacturers in the same trade within their district, requiring obedience from their adherents in any scheme which should be resolved upon by their self-constituted rulers, and, above all, ensuring that obedience by the administration of an oath, binding the party sworn to keep secret their designs, and to punish even with death any one who should betray their counsels. After securing, as they vainly imagined, a considerable number of partizans, by means of these illegal oaths, they proceeded to the execution of those purposes which they had primarily in view, namely, the destruction of the improved machinery, which is vitally necessary to the woollen and cotton manufactures, but which these deluded men, in their folly, imagined to be prejudicial to their interests. This idea is proved to have been carried from Nottinghamshire into Yorkshire. But in the latter county, and in Lancashire, the principle was acted upon to a greater degree, and with much greater boldness, than it had been among the stocking manufacturers. Two greater outrages never were witnessed in a civilized country, than the attack made on the 11th of April upon the mill of Mr. Cartwright (which is the subject of one of the succeeding trials), and the burning of Messrs. Wroe and Duncuft's manufactory at West Houghton in Lancashire, on the 24th of the same month, for which several culprits were executed at Lancaster. Yet the spirit of outrage did not stop here: for the Luddites at length did not scruple to avow, that the breaking of the machinery was of no use, while the masters of that machinery were alive; and from thence they persuaded themselves that they should render a service to the public by the destruction of those masters, of whom several were personally attacked, and in one instance (which will be detailed hereafter) with fatal success.

About the same period the high price of provisions caused some riots in the markets at Sheffield, Manchester, Macclesfield, and a few other places, where the vendors of provisions were either plundered of them, or compelled to sell their articles far below the market price.

The exertions of the magistracy in Lancashire and Cheshire, had, early in the month of May, filled the gaols of these counties with prisoners charged with the various offences before alluded to. And upon representations from thence, it was determined to send down, without delay, commissions into each of these counties, for the trial of such prisoners. Those commissions were accordingly issued, and were opened at Lancaster on the 23rd, and at Chester on the 26th of May. Under each of those commissions numerous convictions took place for every gradation of offence: and of the capital convicts, eight at Lancaster, and two at Chester, suffered the penalty of the law.

In Yorkshire, the course of justice was slower; and although the tide of blood appears to have been checked by the executions in Lancashire and Cheshire, and by the acts passed by parliament relative to this subject,\* yet the very important discovery of the perpetrators of the more atrocious crimes committed in the county of York, was made earlier than the month of July. In that month some commitments took place, and information was obtained, which gradually led to the detection of the parties to the nefarious scenes recorded in the following pages. And it is but justice to say, that these discoveries have been in a great measure owing to the unremitting zeal and persevering courage of one magistrate residing in the very hotbed of dissipation, near the town of Theddlethorpe.

Early in the present winter, the goal of York having become thronged with prisoners, and some of them committed for very heinous offences, it was resolved by government to issue commissions for bringing them to an immediate trial; and those commissions having been directed to Mr. Baron Thompson and Mr. Justice Le Blanc, they appointed the 2nd of January for opening them at the Castle of York.

The cases which will be detailed in the following pages, will exhibit a melancholy portrait of the depravity of human nature. We see young men, capable of gaining an ample livelihood by honest industry, led to the commission of the most heinous crimes, without any adequate, it may almost be said, without any, motive. They fancy themselves aggrieved by the improvement of machinery. They take redress into their own hands. To secure their object, they form societies, linked together by illegal oaths of secrecy. They thus fancy that they have secured to themselves impunity, and they proceed to the perpetration of the most horrible outrages on the property and persons of individuals, against whom

they are actuated by no personal malice; and do not even stop short of shedding the innocent blood of men who have given no other cause of offence, than by firmly pursuing their lawful callings, not only in a harmless manner, but in that best calculated to promote the interests of the community.

We see, in several instances, that the disaffected had experienced such success as to make them speculate on overruling even the government of the kingdom; and it is to be feared, that the emboss of revolutionary principles, which had been unconsidering for several years, were revived in the country where these scenes were acted, by the fancied grievance of improved machinery, and the temporary success which its destroyers met with in the vicinity of Nottingham. Encouragement was given by the doubts cast on the moral turpitude of these crimes; and the evil was raised to its height by the religious fanaticism which unaccountably exists in an excessive degree in these populous districts.

The supposed grievance of which these deluded men complain, arising from the improvement of machinery, has been denominated a fancied grievance. It would be wasting time to argue upon the undoubted right of every subject of this kingdom to conduct his trade in such manner as he may deem most conducive to his own interests, unless where the wisdom of parliament has controlled him by regulations. But the events of the last year prove that it may not be altogether superfluous to show how it is, that the improvement of machinery is beneficial, instead of being detrimental, to the interest of the labouring manufacturer, as well as to the community at large. It is obvious, that the demand for any commodity increases with its cheapness, and that the purchaser will resort to the market at which it is sold at the lowest rate; and, therefore, that every thing which contributes to the cheapness increases the demand, and gives an advantage to the market, where such cheapness exists, over all other markets, where from local causes, the commodity cannot be sold at so low a price. Where the demand increases the number of hands employed will increase also. But nothing has been ever found to contribute so much to the cheapness of a manufactured article as the use of machinery, which enables the same work to be done, not only in less time and with fewer hands, but by persons of earlier age and of less robust constitution, than can render themselves useful while all the operations are to be performed by bodily strength. Hence all the members of a family are now enabled to contribute towards its support, instead of relying (as

formerly was the case) altogether upon the exertions of the husband and father, who still has many parts of the manufacture to which he may apply his vigour, and earn ample wages. What then would be the consequence, if the endeavours of the disaffected could succeed in the expulsion of machinery? The wife and the young children would be thrown out of employ: the husband and the father must support them entirely by his own labour; the price of the manufactured goods would be raised, the purchaser would resort to a cheaper market, where the use of machinery was encouraged; the trade would decay; the manufacturer would gradually discard his journeymen or reduce their wages; while their families would become more and more burthen-some; and finally, nothing but poverty and misery would prevail.

A notion has been entertained by some, that the disturbances have been in a great degree ascribable to poverty and distress, arising from the want of foreign markets for our manufactures. It has been already stated, that at a few towns, in the spring of the last year, there were some riots arising from the high price of provisions; but in the neighbourhood of Huddersfield, which was the metropolis of discontent, not the least symptom is to be discovered of Luddism having arisen from these causes. On the contrary, many of the prisoners tried at York rested their defence on stories which depended for their credibility on the fact, that work was superabundant.]

**PROCEEDINGS** at the Session of Oyer and Tenner and Gaol Delivery, for the County of York, held at the Castle of York, in January 1813.

**ON** Saturday, January the 2nd, the honourable Mr. Baron Thompson [afterwards Lord Chief Baron of the Exchequer], and the honourable Mr. Justice Le Blanc, opened the Commission.

*Monday, 4th January 1813.*

After the usual forms, the grand jury panel was called over; and the following gentlemen were sworn:

The Hon. *Henry Lascelles* [afterwards second Earl of Harwood], foreman;

The Hon. *William Gordon*,

*Sir Bellingham Reginald Graham*, baronet,

*Sir Henry Carr Motson*, baronet,

*Sir Mark Masterman Sykes*, baronet,

*Sir John Eister Kaye*, baronet,

*Robert Frankland*, esq.

*John Robinson Foulk*, esq.

*James Archibald Stuart Wortley*, esq.

*Thomas Davison Bland*, esq.

*Joseph Radcliffe*, esq.

*Thomas Norcliffe*, esq.

*John Bell*, esq.

*Ralph Creggie*, esq.

*Hall Plummer*, esq.

*Thomas Dunscombe*, esq.

*John York*, esq.

*Richard Bethell*, esq.

*Richard Steinforth*, esq.

*Robert Harvey*, esq.

*John Winner Field*, esq.

*Henry Willoughby*, esq., and

*Richard York*, esq.

Mr. Baron Thompson, then delivered the following charge:—

Gentlemen of the grand Inquest;—We are assembled, by virtue of his majesty's commission, to exercise the criminal jurisdiction in this county, at this unusual season of the year for the occurrence of such solemnities. None of us, however, can be insensible of the necessity which exists for a speedy investigation of the charges against the very numerous class of prisoners in your calendar. You will perceive I allude to those persons, who are accused of having participated (and several of them in repeated instances) in those daring acts of tumultuous outrage, violence, and rapine, by which the public tranquillity has been disturbed throughout the great manufacturing district in the West Riding of this county, for a period comprising, with little intermission, almost the whole of the year which has just elapsed.

Those mischievous associations, dangerous to the public peace, as well as destructive of the property of individual subjects, and in some instances of their lives seem to have originated in a neighbouring county, and at first to have had for their object merely the destruction of machinery invented for the purpose of saving manual labour in manufactures: a notion, probably suggested by evil designing persons, to captivate the working manufacturer, and engage him in tumult and crimes, by persuading him that the use of machinery occasions a decrease of the demand for personal labour, and a consequent decrease of wages, or total want of work. A more fallacious and unfounded argument cannot be made use of. It is to the excellence of our machinery that the existence probably, certainly the excellence and flourishing state of our manufactures are owing. Whatever diminishes expense increases consumption, and the demand for the article both in the home and foreign market; and were the use of machinery entirely to be abolished, the cessation of the manufacture itself would soon follow, inasmuch as other countries, to which the machinery would be banished, would be enabled to undersell us.

The spirit of insubordination and tumult, thus originating, has spread itself into other manufacturing districts; and when large bodies of men are once assembled to act against law, the transition unhappily is too easy from one irregular act to another, even to

the highest of crimes against society. And thus we find that the destruction of tools has been succeeded by destroying the houses and the workshops of the manufacturers; it has led to the violent robbery of arms, to protect the tumultuous in their illegal practices, and to enable them to resist or to attack successfully; and from the robbery of arms they have proceeded to the general plunder of property of every description, and even to the murder, the deliberate assassination, of such as were supposed to be hostile to their measures. A temporary impunity (for the law, though sure, is slow) has led on these deluded persons from one atrocious act to another; from the breaking of shears to the stealing of arms, to nightly robberies, to the destruction of property, and of life itself.

The peaceful and industrious inhabitants of the country where these enormous practices have been committed, have had the misfortune to suffer in their persons and property from the acts of men confederated against society, and executing the purposes of their association under circumstances carrying with them the utmost terror and dismay. Armed bodies of these men, in some instances several hundred in number, apparently organised under the command of leaders, and generally with their faces blacked or otherwise disguised, have attacked the mills, shops, and houses of manufacturers and others, by day as well as by night, destroyed tools worked by machinery, and in some instances shot at the persons whose property they have thus attacked. But the worst of these misdeeds is yet behind, a most foul assassination. While such outrages as those mentioned were carrying on in that part of the country, a person in a respectable station of life, returning from Huddersfield to his residence at Marsden, was fired at and shot from behind the wall of an inclosure near the road, receiving several wounds, of which he died shortly after. With this murder some of the prisoners in the calendar stand charged; and it will be your province to inquire into the foundation of that, as well as every other charge to be preferred before you against any of the prisoners, and to treat them as the evidence before you, in your judgment, shall require.

Probably it may be thought requisite, in order to substantiate the charges against the persons accused of being concerned in this murder, or other offences that may come before you, that the testimony of an accomplice should be produced; which is necessary, in many cases, in order to prevent the worst offences from escaping punishment. You will, however, attend to it with caution, taking into consideration all such circumstances as may be laid before you, tending to confirm his evidence, and to satisfy you, that in his narrative of the transaction, in which he would involve others with equal guilt with himself, he is worthy of credit. Such testimony (that is, of an accomplice) is undoubtedly competent,

and it is at all times to be received and acted upon, though with a sober degree of jealousy and caution; and with such caution, you, gentlemen, in the first instance, and more especially those who shall be charged with the determination of these important issues in their final resort, will consider them.

With regard to the guilt, which persons may incur by engaging in any riotous assembly, the statute of 1 Geo. I. commonly called the Riot act, has enacted, that if any persons, to the number of twelve or more, who shall be unlawfully, riotously, and tumultuously assembled together to the disturbance of the public peace, shall not disperse, but continue in that state for the space of an hour after such proclamation made as is directed in the act, they shall be guilty of felony without benefit of clergy. And by the same statute, if any persons, so unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, shall unlawfully and with force demolish or pull down any dwelling-house or other buildings therein mentioned, they shall also be guilty of felony without benefit of clergy.

So also by the statute of 9 George III. it is made a capital felony, for persons, being riotously and tumultuously assembled, to pull down or demolish, or to begin to pull down or demolish any wind saw-mill or other windmill, or any watermill or other mill, or to set fire to the same. In addition to which, the act of 43 Geo. III. cap. 58, has provided against the maliciously setting fire (among other things) to any mill, warehouse or shop, with intent to injure or defraud any of the king's subjects, by subjecting the offenders, their counsellors, aiders and abettors, to a capital punishment.

I do not know whether the offences, of which any of the prisoners are accused, were committed under such circumstances as will bring them within any of the acts I have stated, so that indictments may be framed upon them; but it seemed not unnecessary to state these statutes, in order to call your attention to them, in case any such indictment should be preferred.

But there is one statute, which appears to apply to the charges against the greater number of the prisoners: those who are accused of having destroyed shears employed in the woollen manufacture. By the statute of 22 Geo. III. cap. 40, if any person shall by day or night break into any house or shop, or enter by force into any house or shop, with intent to cut or destroy any serge or other woollen goods in the loom, or any tools employed in making thereof, or shall wilfully and maliciously cut or destroy any such serges or woollen goods in the loom or on the rack, or shall wilfully or maliciously break or destroy any tools used in the making any such serges or other woollen goods; every such offender shall be guilty of felony without benefit of clergy.

Several of the charges in the calendar, will

probably be brought before you in the shape of indictments, either at common law for burglaries, or robberies by violence from the person, and will deserve your serious attention. Other indictments will probably be preferred for maliciously shooting at persons; which, by the statute of Geo. I, is made a capital felony, though death does not ensue.

I do not know, whether any indictments will be brought before you against any persons as accessaries, either before or after the fact, to any felonies which may become the objects of your inquiry; but it may not be unnecessary to state, upon this occasion, that there may be accessaries to all felonies committed before and after the fact, whether felonies at common law, or created such by statute: an accessary before the fact being one, who, being absent at the time of the crime committed does yet procure, counsel, or command, another to commit a felony; and an accessary after the fact being a person, who, knowing a felony to have been committed, receives, succours, comforts, or assists the felon: and generally any assistance given to the felon, to hinder his being apprehended or tried, or suffering punishment, makes the assistant an accessary; and, in some instances, accessaries to felonies are deprived of the benefit of clergy, as well as principals.

There is also an offence, which the law denominates misprision of felony; which is, the concealment of a felony which a man knows; and which is punishable as a high misdemeanor.

There is yet one species of offence contained in your calendar, which deserves to be particularly adverted to, because it is, in all probability, that which has been the means of procuring many of the deluded people who have been guilty of the outrages imputed to them, to embark and to continue in such crimes: I speak of the offence of administering unlawful oaths. By the statute of 37 George 3rd, cap. 123, it is enacted, that any person who shall, in any manner or form whatsoever, administer or cause to be administered, or be aiding or assisting at, or present at and consenting to, the administering or taking of any oath or engagement purporting or intending to bind the person taking it to engage in any mutinous or seditious purpose, or to disturb the public peace, or to be of any association, society, or confederacy, formed for any such purpose, or to obey the orders or commands of any committee or body of men not lawfully constituted, or of any leader or commander, or other person not having authority by law for that purpose; or not to inform or give evidence against any associate, confederate, or other person; or not to reveal or discover any unlawful combination or confederacy; or not to reveal or discover any illegal act done or to be done; or not to reveal or discover any illegal oath or engagement, which may have been administered or tendered to or taken by such person or persons, or to or by any other person

or persons, or the import of any such oath or engagement; this offender shall be guilty of felony, and may be transported for any term not exceeding seven years: and every person who has taken any such oath or engagement, not being compelled thereto, shall also be adjudged guilty of felony, and may in like manner be transported: with a proviso, that compulsion shall not excuse any party taking such oath or engagement, unless he shall, within four days after the taking of it (unless prevented by actual force or sickness, and then afterwards within four days), declare the same, together with the whole of what he or she shall know, touching the same, and the person or persons by whom and in whose presence, and when and where such oath or engagement was administered or taken, by information on oath, in such manner as is directed by the act: and all persons aiding and assisting at, or present and consenting to, the administering or taking of any such oath or engagement, as well as all who cause such to be administered or taken, though not present at the administration of them, shall be deemed principal offenders, and be tried as such, though the person who actually administered such oath or engagement shall not have been tried or convicted. It is also enacted, that it shall not be necessary, in any indictment against any person or persons administering or causing to be administered or taken, or taking any such oath or engagement, or aiding or assisting at, or present at and consenting to the administering or taking thereof, to set forth the words of such oath or engagement, and that it shall be sufficient to set forth the purport of them, or some material part thereof: with a proviso, that any engagement or obligation whatsoever, in the nature of an oath, shall be deemed an oath within the meaning of the act, in whatever form or manner it shall be administered or taken.

By a recent statute, the 52nd of the present king, cap. 104, and which took effect from the ninth of July last, it is provided, that every person who shall administer, or be aiding or assisting at the administering of any oath or engagement, purporting or intending to bind the person taking the same to commit any treason or murder, or any felony punishable by law with death, shall suffer death as a felon without benefit of clergy; and every person who shall take any such oath or engagement, not being compelled thereto, shall be guilty of felony, and be transported for life, or for such term of years as the Court before which he shall be tried shall adjudge: with provision for indemnifying a person taking the oath, on his discovering the same, and complying with the terms prescribed by the act.

No one, who seriously reflects on the infinite mischiefs that may happen to society, from persons associated for any unlawful purpose whatsoever, thus binding themselves to each other under what they are taught to consider as the sanction of an oath, and cementing their union in wickedness by this profane ap-

pool to the Almighty to witness their desperate engagements, can conceive that the punishment which the legislature has provided for such offences, is in any the least degree severe.

You will perceive, that in the course of the address, with which I have now troubled you, I have forbore to advert to any other offences in the calendar than those which appear to be connected with the fatal disturbances in the West Riding, which have produced such dreadful consequences; because I am not aware that any other indictments will be brought before you upon this occasion. And if there should be such, those other offences do not appear to me to be of a nature, that to gentlemen of your description, and accustomed to such inquiries, would call for any observation from me.

I cannot conclude without expressing the utmost confidence that the country may safely rely on the vigilance and attention, with which you will proceed in the examination of the different charges to be brought before you. No indignation at the outrages which have been committed, will excite any prejudice in your minds, when you are weighing the evidence against each individual accused, and deciding how far he is personally implicated in the crime imputed to him. And however those who have been engaged in those desperate outrages which we deplore, have thereby despised and set at nought the laws and their authority; yet, the persons who are now the objects of your inquiry, will find, that these laws will continue to be administered, not more for the detection and punishment of the guilty, than for the protection and safety of the innocent.

I cannot conclude without also expressing a thorough confidence, that, having discharged the duty which has assembled you at this time, and returned to those parts of the country where you respectively reside, your earnest endeavours will constantly be exerted to restore and preserve the public peace, and to convince those who are liable to be seduced from their duty by the arts and delusions of wicked and designing men, of the fatal consequences attendant on their giving way to such evil solicitations, or engaging in any disturbances of the public peace and tranquillity; and that you will, on all occasions and in every situation in which the country enjoys the benefit of your services, be earnest and anxious to inculcate a firm allegiance to his majesty's throne, and a reverence to the laws, and thus to promote that general regularity and order, upon which depend the peace and the comfort of civil society."

Thursday, 5th January, 1812.

THE KING  
against

JOHN SWALLOW, JOHN BATLEY, JOSEPH FISHER, and JOHN LUMA.

The prisoners were arraigned on an indictment

ment for burglariously breaking the dwelling-house of Samuel Moxon, at Whitley Upper, on the 2nd of July last, and stealing sundry articles, the property of William Moxon;—and severally pleaded, Not Guilty.

The Indictment was opened by Mr. Richardson [afterwards a judge of the Common Pleas].

Mr. Park [afterwards a judge of the Common Pleas].—May it please your lordships; gentlemen of the jury, the indictment, which has been fully stated to you, is a common indictment for the crime of burglary. From that circumstance alone, therefore, there would appear nothing unusual in our present assembly; but, from the number of persons here met together, and from the circumstances under which this burglary has been committed, it is quite impossible that it can be tried as a common case of that sort.

Gentlemen, I am not aware that all of you (and probably the contrary is the case) were here yesterday, to know upon what ground it was that you have been called together at so unusual a period of the year. Though I believe every one of you (as I have collected it from the panel from which you have been called) lives at a distance from the place in question, it is quite impossible that any man in the most remote corner of the kingdom can be otherwise than apprised of the dreadful disturbances that have been taking place in one district of this country for a considerable period of time, amounting almost to a state of actual rebellion; and the prisoners at the bar are charged as being a part of the gang implicated in those disturbances.

Gentlemen, it has been thought wise by those who administer his majesty's government, to send down a commission to try the persons charged with these offences. And in so doing they have acted most wisely for the public interests, most humanely towards those who maybe innocent of the crimes with which they are charged, and most justly towards those who have been the objects of these attacks; for it is fit they should be satisfied, that themselves, their houses, and their property, will be protected by the arm of the law. It is of the greatest importance in every well-regulated government, that those who either commit, or meditate to commit, great and heinous offences, should be soon convinced that the arm of the law is able to quell such disturbances, and restore peace to those who have been so grievously offended as many of these prosecutors have been. And it is of great importance, in a lenient point of view, to those charged with offences, that if the crimes with which they are charged, cannot be brought home fully to them, and therefore in point of law they are not guilty, although they should happen to be morally guilty of the offences with which they are charged, they should not be kept from earning (which I hope those who may be sent forth from hence, by verdicts, or by any lenity on the part of the

crowns, will go doth to ~~each~~ an honest knighthood.—These are the grounds on which their lordships have been troubled to come from London, and this great country has been assembled, at this period of the year.

Having stated this, I will proceed to detail the circumstances of the particular case before you, knowing perfectly well that no motives upon earth, but an anxious desire to do justice under the solemn sanction of that oath which has just been administered to you, will lead you either to convict or acquit any of the persons who may be brought before you. It is the greatest consolation to every man who loves the constitution of his country, that there is such a tribunal as this; for, being all sworn under a sanction which you all feel, no indignation at the conduct of individuals will lead you to depart from the straight rule of law, on the one hand; nor will any base or cowardly fear, on the other, prevent your doing that justice to your country, which the necessity of the case may demand from you. For it will ever be remembered, and it has been stated by one of the wisest men who ever sat in a court of justice, that at the same time that every pity is due to persons in the unfortunate situation of the prisoners, or to persons whom wicked and crafty men lead into such circumstances, there is also a very great pity due to the country, and to all who are so disturbed in the peaceful and quiet possession of their premises, their property, and their lives.

Gentlemen, the four prisoners at the bar were concerned, as I stated—and you will always understand, and I say this as a previous caution, that where I state facts positively, as I shall do, I am not alleging that they will be proved exactly as I state them to you; you will attend to the evidence, and not to my statement of it; and my only reason for a minute statement is, to draw your attention better to the evidence when it is laid before you by the witnesses—the four prisoners at the bar stand charged with having, with some others, gone to the house of a person of the name of Moxon, on the night of the third day of July in the last year, and committed the burglary in question. The circumstances were these, without applying them, at present, to any of the individuals now before you: four or five persons (which, I believe, the prosecutor, whose house was attacked, magnified by his fears into a larger number of seven or eight, though but only two or three entered his house) called for admittance very vociferously, and fired against his house. It has come to my knowledge, and will be yours, gentlemen, not only in respect of the present trial, but, if you should sit as the jury on any other, it will appear to be the constant course, that when houses are assailed, they begin (quite unusually from other cases of burglary) by intimidation, by firing off arms as they approach the house, to convey terror and dismay to those who are within. And it will appear quite astonishing, what a degree of terror this occasioned in the

minds of the persons attached. There was used a great degree of force, and threats, and every sort of intimidation, till Moxon, the prosecutor, opened his door.

Samuel Moxon, who is the prosecutor, is an aged person: he has a son, living with him in the house, of the name of William Moxon. William Moxon is a married man, and has a family of children; and there are living in this house nine an apprentice and a journeyman. Samuel Moxon is not here; through age and infirmity he is totally unfit to be brought hither, and he knows nothing of the fact, except what his son will fully prove. When the house was opened, a pinner rushed in, covered with a smock-frock, or some white garment put over his clothes. He named William Moxon, and insisted on his delivering sums; which is always the first demand made by those who commit these offences under the name of Luddites. Moxon answered, “We have no arms.” “Why then,” says the man, “you have some money.” Upon which, Moxon delivered them a one pound note, and ten or twelve shillings in silver. He was then hurried into the parlour by this same man, who was armed with a pistol, and it was said to him, “We know that these money is in the house; and if you do not give us more money, we will blow your brains out.” Upon which, Moxon delivered two one pound Bank of England notes, which he had about him. He was told that he should be fired at if he did not give them; and some one of the prisoners said, “O, stand out of the way; I will fire at him.” However, no firing took place to injure him personally. They then went into the cellar of the house, took out a good deal of property, hung beef, tongues, seven, eight, or nine pounds of butter, and a quantity of linen, which was hanging on what is called a winter-hedge (I understand it is something of the nature of a clothes-horse); and you will find the goods were afterwards divided among some of the prisoners.

This, gentlemen, is the story of the crime—this is the crime itself. Now, the question is, how do I fix this crime on the prisoners? On that subject (unless my instructions totally deceive me), I never saw a clearer case. In the first place, I shall call before you a person, who is an accomplice (I state that to you in the outset), a person of the name of Rad Parkin.

The law on the subject of accomplices, I state to you now, gentlemen; subject of course to his lordship’s opinion, and that of his learned brother, by and by; knowing that I shall be right, if I should inadvertently state it wrongly; but it shall be my earnest wish, never to misstate any principle of law. I may be mistaken, but I will not endeavour to mislead you. An accomplice is, of course, a person involved in similar guilt with the prisoners; he was along with them, otherwise he could not relate the circumstances. But the law of England has said, and has said



wisely, that, inasmuch as the most enormous crimes would go unpunished if accomplices were not examined, they are competent witnesses, and are witnesses who may be examined before any other corroborative facts are given in evidence: they are witnesses, upon the credit of whose testimony a jury are to pass their judgment, whether they are speaking the truth. In that respect they stand in the situation of other witnesses. But, inasmuch as they come into court themselves implicated in the same offence, juries will look at their evidence with a greater degree of scrupulousness. In the dreadful situation in which this country has been placed, it is almost impossible to obtain the ends of justice, without calling accomplices. It is most important for our best and dearest interests, that they should be called; and a happy thing it is for the country, that if these men have, from any bad passions in their own minds, or by the solicitations of others, been led into error, these errors are endeavoured to be retrieved. Still always you must examine and sift their evidence. The course which has been usually adopted, and which will be adopted upon this occasion, certainly is, to give corroborative evidence. We shall give decidedly corroborative evidence upon this trial; we shall call witnesses to you, who will confirm the accomplice in many particular parts of his story. But here I would interpose a caution, in which I shall have his lordship's sanction, for I have heard his lordship lay down similar law; I have heard other judges lay down similar law, and I am satisfied I shall lay it down rightly:—It is not necessary, nor can it be, that the accomplice should be confirmed in every fact. If that could be done, we should not want him at all. It is default of evidence upon these facts, which renders it necessary to call the accomplice. Therefore the circumstances to be looked at by the jury, are his own demeanor and conduct in giving his evidence, and whether he is confirmed by other witnesses in such particulars as render it proper to give credit to that which he states.

Under these circumstances, therefore, I shall call the accomplice, who will tell you this; that the four prisoners and himself had assembled together; that they had conversation about various acts of Luddism (as it was called), and that they set out on the night of the third of July, to commit the robbery in question. They went to a place called Bedford's Cabin. Several of them there pulled off their shirts and put them over their clothes, for the purpose of disguise. You will find that they were further disguised, by taking soot from the back of the chimney and rubbing it over their faces. And this is another most material circumstance, that these disguises, which are in themselves a very high crime, and constitute the essence of all the crimes lately committed in this county, create a difficulty of conviction; because it is quite impossible that any of those whose houses or persons have been attacked, unless they happen fortu-

nately (as is sometimes the case) to know the voices or the general manner of the men by whom they are attacked, can speak to their persons: so that the very essence of the crime (as I before stated) constitutes the difficulty of conviction.

I shall call before you another person, Samuel Parkin, who was solicited to accompany these men upon this unlawful transaction. He was threatened and intimidated, and did go a considerable length with them. Whether he would, in the eye of the law, be considered an accomplice, I will not say; but he did not know the particular errand upon which they were going. When they approached within two hundred yards of the place, one of the prisoners, of the name of Swallow, said, "Old Samuel Moxon has a few guineas laid by him, and we will go and take them." This witness immediately said, "If that is what you want, I will go no further." Upon which they said to this man "Then we will shoot you." "Well," says he, "I am determined not to go. Shoot you may, if you please, but I will not go." And accordingly he stopped.

But the case does not rest here. I shall call a witness before you, to prove what is certainly a light circumstance; but it is by light circumstances that justice is sometimes brought about. It is astonishing what very small circumstances, when compounded together, will make out such a case as will render it impossible for a jury not to convict. I shall call before you Jonas Boocock, a man who that afternoon, before the robbery was committed, saw two of the prisoners at the bar, and Earl Parkin, the accomplice, near the garden of one of them, in close conference. He spoke to them, knowing them perfectly well, and said, "Why you old pensioners have gotten all summed up together;" upon which Swallow said, "Aye, but we have been more;" that is, we have been more persons together.

Now, gentlemen, I come to the most important feature in the case, as to confirmation of the accomplice. I shall call before you a person who lives near to Moxon's house, who was going home at the time they approached Moxon's house, and who met in his way several men, two or three with blacked faces, and two with shirts over their clothes. His attention was excited, he came near enough to touch them, he observed one was carrying a gun and one a sword; one of them called out (and he will prove his knowledge of the voice) and desired him to walk off; he continued however to observe them, and one of them (and the voice he vorily believes was Fisher's) called out to the man who had the gun (and which you will find was Earl Parkin, the accomplice) to fire, and Earl Parkin obeyed, and fired over his head. The man, whose name is Peace, in consequence of this, did sheer off a little, and got on the other side of the hedge; but being suspicious they were about some harm, he turned back along the field and quickened his pace, so as to give himself the appearance of

a different person; but they knew him, and called out to him, that if he did not go off they would fire at him, and they threw a stake at him, which hurt him upon the loins; and one of them even followed him to his house, and said, "You are about like" (that is, as I understand, you are in good luck) "to meet with such quiet chaps as we are, or you would have been dead long since."

Here, then, is an accomplice, who is to swear to the whole of the crime. How, then, is this accomplice confirmed? He is confirmed by Boocock, who saw these men together in the afternoon; he is confirmed by Samuel Parkin, who went with them a great way, but retreated and would go no further; and he is moreover confirmed by Joshua Peace, who has no more concern in the transaction than any of you, and who will tell you that he heard of the transaction at Moxon's the next morning. He will confirm the accomplices in these material points, the having the shirts over their clothes, which Moxon will also confirm; the having their faces blacked, the having shot over his head, and those other circumstances I have enumerated. And when these facts are proved, I am at a loss to see how any case can be stronger.

But the case does not stop here: I shall go on to confirm this. You, who fill a different situation in life, I dare say are not quite aware how very lightly persons in the situation of the prisoners at the bar, who have been involved and glory in these transactions, and think that there is a merit with society for what they are about, how lightly they communicate things to each other, which those in a different situation of life would never dream of communicating. This observation I make, because you will find, that very soon after the transaction, a conversation took place, in which there was a decided acknowledgment by Swallow, that he had been at Moxon's house during the robbery. He met one Littlewood on the 6th of July, the next day but two after the fact, the night of what is called the Gig Fair, at Wakefield; he met him on Grange Moor; they were acquainted, and talked about the times; Swallow said, "If you knew how to do as well as I do, there would be no occasion to work." And after some further conversation, he asked Littlewood, "Have you heard what has been done at Moxon's?" Littlewood said, "Yes, I did hear what was done there." Says Swallow, "There was little got there but nine or ten pounds: of butter, three notes, and some clothes; but if we go to a house, and pass as Luddites, it is only going to the door, and there is no resistance made." For the reason I gave you, that they came with such intimidation upon poor unfortunate persons like the Moxons, living in lame houses, who have no protection, even of servants, that they have not the courage to make any resistance, and they generally plunder them when they find no arms. He then urged Littlewood to become one of them, which is a common course

with them also. He said "No, he would not;" and he immediately made known the circumstances of this case.

Now, gentlemen, I could confirm Littlewood also, if it were necessary; but he is no accomplice. At the time they were talking, two men came up, Roberts and Sykes, and they will prove, that they saw their acquaintance, Littlewood, conversing with another man. And here is the fact of confirmation. Swallow was afraid of being seen talking with Littlewood, and he threw himself down upon his belly, that they might not see his face when they came up.

Gentlemen, when these unfortunate men were committed to this Castle, there was a prisoner for debt in the Castle, who was an old acquaintance and neighbour of Lumb, one of the prisoners at the bar: and the very next day after they came into custody, this man said to Lumb, his neighbour, "What have you been doing to get here?" (an extremely natural inquiry for a neighbour to make) and in the presence of Fisher, one of the other prisoners, Lumb said, "I am here about Moxon's stir." That of itself would prove nothing, it would not prove his guilt; but only that he had been sent here upon such a charge; but he added, "I was not with them in breaking into the house, but I was within about twenty yards of them when they did the job, but I have shared in the stuff they took." Fisher was present at this; and Fisher himself afterwards said to the same effect; and they both laid the blame on Swallow. Now I do not state that as evidence against Swallow. I should be extremely blameable if I did, because, whatever any one of them said, not in the presence of another, would be nothing against that other. Lumb said, "I was not with them in breaking into the house, but I was within about twenty yards." His lordship will tell you, that, in point of law, if a number of men engage together in an unlawful purpose, they are all involved in the guilt; it is not necessary that all should be engaged in each particular act. If one waits at the door while another goes in, they are all equally guilty. And most fortunate it is that the law is so, for, otherwise, a man about to commit a robbery, would send in a child to commit the robbery, who was not the fit object of an indictment. But the law has said whoever stands to aid and abet those who commit an offence of this kind, or uses any weapon necessary for the defence of those committing the immediate felony, they are all equally guilty. Fisher said, they both blamed Parkin as well as Swallow. I state that as against the man whom I am about to call as a witness; and I have no doubt they justly blamed him, for I have very little reason to suppose that he was not equally culpable at that time with them.

This person, who was a prisoner for debt, afterwards spoke also to Swallow. Upon seeing him, he said to him, "Why, what have

you been thinking of, to go and rob Moxon?" "Why," said he, "I do not know what I was thinking about; to be sure I was there, and it cannot now be helped." So that here is complete proof, here is an admission of the fact on behalf of three of the four prisoners, throwing the blame on each other, certainly. It does not affect Batley; he is not implicated by their declarations.

I cannot tell what instructions my learned friends may have, with respect to the prisoners, and therefore I feel it my duty to the country and to you, I feel it particularly my duty to their lordships, in cases of this sort, to leave nothing short of giving perfect satisfaction to the Court and to you, who have so very painful and anxious a duty to discharge; and mine is not less painful. I apprehend the defence will be, that the prisoners were not there. I have the examinations, which I shall read to you, of these four persons, all of whom admit the fact, except Swallow. But I do not want his examination for I shall have his admission, independently of the witness Parkin. I have the examination of Batley, who says, "I was not in the house" (which he certainly was not) "but I was near to the house at the time." Then he was upon the spot, he was one of those who went there to assist in that robbery; he assisted by his presence, he assisted by his encouragement and excitement of the others; and I need not state to you that, in any transaction of life, there is a great comfort and countenance given by having other persons joined with you. Fisher says, that at the request of Swallow and Parkin he went with them, on the night of the 4th of July, being intimidated by the threats of Swallow and Parkin, who threatened to kill him if he refused to go. That is no excuse for the crime; it may be a reason in his majesty's mind, or the minds of those who exercise the power of government, for a difference in punishment, but it is no reason with you. Then the prisoner Lumb says, that on the night of the 4th of July last, he was in company with Swallow, who produced pistols, and asked him to go along with him to Moxon's; that he went to within an hundred or an hundred and fifty yards, and there stopped; and did not assist in robbing the house. Very likely not, but that does not signify, as I have already stated to you.

You will perceive there has been, in these examinations, an extremely careless blunder on the part of the clerk of the magistrates. This is described as the night of the 4th of July; there is, however, but one night in question, so that no doubt can arise from this error, and I only mention it for the purpose of showing you that it is not overlooked.

Gentlemen, this is the sort of case I have to lay before you. I have entered into it, perhaps, more at length than their lordships will fully approve; but I thought it my bounden duty, at least in the first of these cases, to enter largely into it, that you may be fully aware of the manner in which I hope to conduct these

prosecutions. It is an extremely painful duty, but it is a duty that we must perform with tenderness and attention, certainly, to the prisoner's interests, but with manfulness as it regards the interests of the public.

[The witnesses for the crown and for the prisoners were then examined; but as their evidence is fully stated in the learned judge's summing-up, it is thought needless to detail it in this place.]

#### SUMMING-UP.

Mr. Baron Thompson.—Gentlemen of the jury; this is an indictment against the four prisoners at the bar, John Swallow, John Batley, Joseph Fisher, and John Lumb; charging them all with a capital felony. For the charge is, that they, upon the 3rd of July last, about the hour of one in the night, broke and entered the dwelling-house of Samuel Moxon, at the parish of Kirk-Heaton, and that they there stole the quantities of silver coin which are enumerated in the indictment, together with some promissory notes for the payment of money, and some bank-notes, the property of William Moxon; as also some other articles, such as provisions, butter, and so on; together with linen, stockings, and other articles, which are laid to be the property of that William Moxon.

The question for your consideration is, whether these prisoners, or any, and if so, which of them, are guilty of this charge, which is brought against them in the way I have stated. And this charge, as you were told in the opening by the counsel on the part of the prosecution, so far as it is to affect the prisoners at the bar, is principally to be supported by the evidence of an accomplice, who, you were also rightly told, is a competent witness to be examined before a jury; but, though competent to be examined as a witness, is to be heard with extremely great caution; and juries are always advised by the Court to pay no more regard to the evidence of an accomplice, than as, in the course of the inquiry, they shall find him confirmed by some unimpeachable testimony in some part of that evidence he has so given, so as to induce the jury to think that, notwithstanding the character in which he himself stands before them, he is entitled to credit. For, if an accomplice is materially confirmed in his evidence by such testimony as the jury think is unimpeachable, then, notwithstanding the character in which he stands before them, he is to be heard and to be credited by them. And you also were rightly informed that it was not necessary an accomplice should be confirmed in every circumstance he details in evidence. That would be almost a matter of impossibility, and if every circumstance to which he has spoken could be confirmed by other evidence, there would hardly be occasion to take the accomplice from the bar as a prisoner, to make him a witness here: that is certainly too much to be expected, and

never is required. It is quite sufficient to see that, in some material facts, the witness, who shall have been an accomplice, is confirmed to the satisfaction of a jury; and that confirmation need not be of circumstances, which go to prove that he speaks truth with respect to all the prisoners, and with respect to the share they have each taken in the transaction; for if the jury are satisfied that he speaks truth in those parts in which they see unimpeachable evidence brought to confirm him, that is a ground for them to believe that he also speaks truly with regard to the other prisoners, as to whom there may be no confirmation.

Now, gentlemen, it will be for you to attend to the evidence which has been laid before you in support of this charge.

The first witness is William Moxon, a son of the prosecutor; that is, the person whose house is charged to have been broken into by the prisoners. The property in that house is said to be the property of this William Moxon. He states, that his father is tenant under a Mr. Beaumont; that he (the witness) lives with his father, and that there was a foreman and two apprentices living in the house at that time, namely, in the month of July. He says, that upon the third of July, about midnight, or early in the morning, the family having gone to bed between nine and ten, he was disturbed. He explains what that disturbance was. He was called by his journeyman, who came and awakened him. That journeyman is not here. Probably he was the first person who heard any disturbance whatever. He says, the man came to the room door, and in consequence of what he said, the witness got up and went out of the room. Before he left the room, he had heard a noise and disturbance at the door, and voices of some men. He went into the house-part, which is apart from his room; the outer door opens to the house-part, and there he heard a confused noise of voices. The first thing that he heard was the firing of arms. This he speaks to positively. It is rather a strange thing, that if these fire arms were let off, the accomplice should not speak positively to the fact; but he does not. But this man cannot be mistaken; and it appeared to him, he says, as if there were two shots, and they were striking at the windows. There were no shutters to them. Four of the quarries of the windows were broken, and the door was demanded to be opened. It was insisted, he says, that the door should be opened: and the cry was, as nearly as he can recollect, "Open the door." He cannot say whether that cry came from one or two. On the door being opened, a man rushed in disguised. There had been a fire in the house-part, which was nearly gone out. That man had a pistol in one hand, and a large knife, or something of that kind, in the other. He appeared to the witness to have something like a shirt over his other clothes. That is a circumstance for your attention, when you come to hear the other evidence. He said, "I demand your money

in a moment." The witness could then hear a noise on the outside. The man who had entered clapped a pistol to the witness's breast. The witness told the man he had got very little money in the house, and that he had been out that day to Huddersfield to pay for some wood, he himself being a joiner; that he had only a guinea note and some silver in the house. The man said he must have it. The pistol was held at the witness's breast. The witness went into a bed-room where the money was. The man followed him. The witness gave him the money, which he took out of a cupboard: there was a guinea note and some silver, somewhere near twelve shillings in different sorts of coins, shillings and tokens. The guinea note was a Wakefield bank note. The man left him in the bed-room, and ordered him to stay there. The witness saw him go into the house-part, and in at the door that leads into the kitchen. As he was going in at the kitchen-door, the witness heard him say, "What is that watch again?" This he spoke to the men in the house, who had rushed in when he came in. The witness had seen two or three come in, when this first man came in. He came to the witness again in the bed-room, and said, that was not all the money they had got in the house, and if he (the witness) did not look quick, and find him some more, he would blow his brains out. He was armed as before with a pistol, and something like a knife in his hand. The witness answered, that they had no more money, he was sure, unless his father had some; and he did not know that he had any. His father he describes as a very infirm man. The man asked where his father was, and said, if he found him (the father) and he did not find his money, he would either stab him, or stick him, or some words to that effect. The witness's wife was in the room in bed, and she offered to get him a candle, to let him look into the drawers. He said he would not have any candle, he would make the witness find the money. The witness recollected that he had two one pound bank of England notes, and he put his hand into his breeches pocket. The man then said, "I see you have got your money in your pocket;" and he then put his hand into the witness's pocket. The witness is not sure whether he gave the notes out himself, or whether the man took them out, but the man had them, and said, "Is that all?" He then put his hand into the witness's left-hand breeches pocket, and finding some papers, said, "What is them?" The witness says, that he had some silver in that pocket; that he told the man, the papers belonged to some wood he had bought at Huddersfield; and the man either gave those papers back, or left them in his pocket, but had the silver, all but a shilling; and that he is not right sure, whether he took it, or the witness gave it to him. It was about four shillings, as nearly as he can tell. The man then left him in the bed-room, and went into the house-part. Some other men were in

the house-part with him. When the man came out of the kitchen to demand more money, there was another man in the house-part, who said to the man that had taken his money, "Stand again, and I will shoot him." A candle was lighted, as the witness was going out of the house-part into the bed-room to get the man the money the first time. The candle was lighted by the other persons by the fire, and they went into the kitchen. He speaks then of some wearing apparel being taken; a shift, about seven shirts, some stockings, and other wearing apparel; and also a piece of boiled beef, and about nine pounds of butter, and a neat's tongue. The money was his, and the butter was his; and the wearing apparel belonged some to him, and some to his father, and some to other persons who inhabited the house. He states, that he knew none of these persons. They appeared to be disguised. They came into the house, as nearly as he can guess, between twelve and one, and went out between one and two.

This is the evidence which is given by this witness, the son of the person whose house was robbed, and which evidence goes to show that the house was robbed under the circumstances which are laid in this indictment, namely, by breaking and entering that house; for, though the door literally was opened by one of the family, if that opening proceeded from the intimidations of those that were without, and the force that had been used, knocking at and breaking the windows, calling and insisting on the door being opened, and firing of guns; if under these circumstances the persons within the house were induced to open the door, it is as much breaking by those who made use of that intimidation to prevail upon them so to open the door, as if they had actually burst the door open. So that you must see upon the evidence given by this man, that unquestionably the house was broken open, and that the property in that house was stolen of the description contained in the indictment. But who were the offenders in this case, this witness is wholly unable to relate, not being able to speak to the persons of any of them, only to their being disguised, and to the circumstance of their having, two of them at least, something that looked like shirts over their clothes.

They next call a witness of the name of Jonas Boocock, who states, that he lives in Grange-lane, in Whitley Upper; that he is a coal-miner, and lives about two miles from Swallow the prisoner, whom he points out; and says he remembers the night when the robbery was said to be done at Moxon's; that between three and four o'clock in the day, on the night of which the robbery was committed, he saw Swallow in a garden which he has near his own house at Sawood, and that there were with him the prisoner Joseph Fisher, and Earl Parkin who is the accomplice. Swallow was upon his garden-hedge bank, about a yard, as

nearly as he could guess, from the beeches of the hedge; the others were on the other side of the hedge, as near as they could stand. The witness said to them, "What, you two or three old pensioners are got together?" They were talking together before he got to them. The prisoner Swallow said, there had been more of them, and he mentioned their names. He might stay with him about ten minutes, and then he left them together. This witness, you see, fixes the time of his seeing the prisoners Swallow and Fisher, and Earl Parkin, together at this garden, to have been between three and four in the afternoon of that day, on the night of which this house was broken open. Parkin states their having been so together at this place, but will not say whether it was that day or the day after. He says that he has known Earl Parkin perhaps half a score years, but not intimately; that he was an undertaker himself at the coal pits at which Earl Parkin and Swallow worked, and was acquainted with them before that.

They then call Earl Parkin, who states himself to be a coal miner, living at Briestwistle, about a mile and a half from Moxon's; that he knows all the four prisoners; that he remembers the night on which Moxon's house was robbed; that Swallow the prisoner is a coal-miner; that he lived neighbour to him at Briestwistle; that Batley is a cloth-maker by trade; that he lived at a place called Thornhill edge, two miles from Moxon's. Fisher then lived about a quarter of a mile from his (the witness's) house at Briestwistle. He was a coal-miner. Lamb was a coal-miner, who lived at Thornhill Edge; and Batley a lodger in his house. He states, that the night that Moxon's house was robbed, he met the prisoners at a place called Fallas, in a coal-pit cabin belonging to John Bedford; this was by appointment. Swallow had made the appointment with him. He had seen Swallow in the town of Briestwistle, in the open street. Only he and Swallow were together. He says that Swallow said they were going to rob Moxon's that night, and he mentioned, that he (the witness) was to make ready and meet them at Bedford's at eleven at night, or not later than twelve. He lives near Swallow, and he thinks he had not seen him that day before. He knows Boocock, and saw him either that day, or the day after, (he does not know which) at Swallow's garden, and there were present, Swallow in his garden, and he and Fisher outside of the edge. Boocock you recollect had brought these persons together, as he says, in the afternoon of the day preceding the night on which the robbery was committed. This witness says they were together but he cannot say whether it was that day or the day after. He says, that when the appointment was made for meeting at night, Swallow told him he was to bring a gun, and he carried a gun with him. He went a little before twelve. There was Swallow, Lamb, Fisher, Samuel Parkin (who it seems is the brother of this man), the witness

himself, and Batley. They met at Bedford's cabin, nearly a mile from Moxon's house. The witness had a gun, Swallow had a gun, and Fisher had a sword. Swallow brought a pistol which he gave to one of them, he does not exactly know to which. Swallow and Batley took off their shirts in Bedford's cabin, and put them on the top of their clothes. You will recollect that the witness William Moxon stated, that two of the men in the house had something above their clothes, that had the appearance of being their shirts. Earl Parkin states that this was so, and says that those two were Swallow and Batley. Swallow and Batley also blacked their faces with grime from the chimney. He thinks that no other, than Swallow and Batley had blacked their faces. They all six left the cabin together. He thinks it was about twelve o'clock, when they went to Samuel Moxon's. He knows Joshua Peace (who was afterwards called) and he says they passed near his house, going from the cabin to Moxon's. They met Joshua Peace at Liley-lane, near his house; they (that is the party), were going in the lane. Peace was going homewards when they met him, they had passed his house; they were all at that time in the lane. Upon meeting him, they all escaped out of the lane into the field, getting over a lowish wall towards Moxon's side. They did not choose to meet Peace. Peace you will recollect said, they did endeavour to avoid him. This witness tells you that Peace said he had been seeking them a great while, and he would go with them. That is the account this man gives, not one word of which has come from Peace. Peace had a little beer in him. They told him to go about his business. He clicked at some of them. Swallow or Fisher, ordered the witness to fire, to frighten him away. A gun was fired to frighten him, and then the witness says he took off up the lane, and then turned back. Swallow said something to him, and followed him with a sword to frighten him; and a stake was thrown at him, and he went away, and then all the party proceeded to Moxon's house. They knocked at the door loudly, and somebody answered from within. He cannot recollect whether a gun was fired or not. That is a very strange thing. The Witness who was in the house was alarmed, speaks to hearing two guns actually fired. This man says he cannot recollect whether a gun was fired or not. They called on Moxon to get up and open the door. The windows were broken. The door was opened by William Moxon. Swallow went in, Batley followed him, and then Fisher; the witness stayed at the door-stone. Lamb stood always off at the building end of the house. Samuel Parkin (that is the witness's brother) never was at the house, and I think we may take it to be a fact, that he did not come up at all. He said he would not go to the place, and stopped at the distance of about two hundred yards, and did never come up to the house at all. He says that nobody ordered him to stop. You will hear presently the account that Samuel Parkin

gave, of his reason for stopping there. He says that Lamb and himself stopped outside, to see whether any person came (as he expresses it) to detect them, Swallow, Batley and Fisher having gone according to his account into the house. Batley gave him some clothes from a winter-hedge, that stood on the floor of the house-part, and Fisher also gave him some. He took them and carried them to John Lamb at the house corner.

I dare say, gentlemen, you need not be informed, that if persons go together to rob a house, and some of them enter the house, and hand out things to the persons outside of the house, or if any persons stay outside the house to watch, they are all equally guilty, as if they all entered and committed the robbery.

He says he could not see what was done in the house, or hear the words that passed. Then he speaks to butter being brought out, and a little boiled beef. Swallow said there was a guinea note, and they all knew of it; but he did not to this witness (if he speaks truly) mention any other money. The things were carried from the house, and were taken to a shroff, a small wood in a valley, belonging to Mr. Beaumont, near the place from whence they set out. There the things were divided, and each of them had some. They were all six there, including (according to his account) the brother, Samuel Parkin. He says his brother was one, he came here, and each person had something, with the exception of Samuel Parkin. That is a circumstance in favour of that Samuel Parkin, and it agrees with the account he has given, of his having no share in the transaction, having declined engaging in it when he knew what was to be done; and according to this account he did not share in the booty afterwards divided. Swallow, he says, kept the money, and said the money was to loose the witness's watch that was left in pawn for beer, when Swallow, Batley, himself, and some others, were out before that time; that none of the other prisoners had had that beer, and that he got back his watch from Swallow about two days after Moxon's stir, as it is called. That it seems is the name given to transactions of this sort; they spoke of them by a phrase so familiar as that. They all went to their own homes when the things were divided.

He says, on cross-examination, it was Swallow who ordered him to meet him that night; he does not know the precise time, but thinks it was in the afternoon; that he has known Boocock ten or a dozen years; that he thinks he had not seen Swallow that day, before he met him in the street, and fixed with him. He thinks it was the day after that he saw Boocock, but he cannot be sure. Boocock, you recollect has fixed it upon the same day. At the time Boocock was passing by, when Swallow was standing in his own garden, he stopped a little, what they related was to him, and all; some of this talk was about collier's work, He does not recollect any-gun whatever being

fired that night, except that which was fired over Pease's head, to intimidate him, when he was watching them and refused to go home. They called to Moxon to let them in, and it was in consequence of that, and not in consequence of any firing, that the door was opened according to his recollection. However, by Moxon's account it appears that it was the firing, which induced him to open the door. He says, he did not think of meeting Samuel Parkin that night, but he found him in the cabin. It was mentioned where they were going, when at the cabin, which was to get what they could out of the house of Moxon. He supposes it was mentioned in Samuel Parkin's hearing. He says, there was a road on the back side of the house, and Parkin stopped in that road. Nothing new was said, when they came near the house, before Samuel Parkin said he would not go to the house. After this the witness was taken into custody, and he supposes (and certainly we may presume it was so) for this charge. He says he never mentioned it to any body but those concerned in it, till after he was apprehended. He understood he was taken to be brought to trial, and he thought it an opportunity of getting off. That certainly is a thought that occurs to every man engaged in a felony; he offers himself as a witness against others concerned in it, undoubtedly with a view to save himself. It must be understood to be so. He does not know how long it was after the robbery that he was taken up, but he thinks about a month, when he mentioned the knowledge he had of the transaction. When Boocock came up, they were not talking of any design on Moxon's, but about their coal work. He did not expect to meet Samuel Parkin at the Moor. He knew before (that is he did himself), that the attack upon Moxon's house was intended. It was mentioned at Bedford's cabin, in the presence of Samuel Parkin. Samuel Parkin, however, has positively denied his hearing at the cabin any discourse whatever, relative to Moxon's house. He says, at the house the windows were broken with a sword, before the door was opened; and they appeared to have been cut, according to the evidence of Moxon, and four panes broken. He thinks the door was knocked at, and admission demanded.

The next witness is Samuel Parkin, the brother of the accomplice, who states himself to be a coal-miner, and that he lived at Lees Moor near Thornhill. He knew all the prisoners. He lived about a mile and a half from his brother. He went to his brother's in July, he cannot recollect the day of the month, but it was before Moxon's stir about three days. He saw John Swallow at his brother's; only the brother and Swallow were there then, and Swallow asked him what he was doing there? The witness said he had lost his work by being localling (or going with the local militia), and Swallow said, "Never mind that," and told him there was to be a meeting at Grange Moor, of Ludds. The witness told him he did

not understand them, and wished to have no hand with them. Swallow ordered him to meet at Bedford's cabin first of all; indeed, to go on to Grange Moor, to meet Lamb and Batley, and Earl Parkin and Fisher. Earl Parkin was there then. He said there was to be a meeting there, but did not say what day it was to be, but the hour was to be between twelve and one at night; representing (according to this witness's account) its being on some business connected with these Ludds, that they were to go upon this Moor at that time of night; which business, it appears, this witness Parkin did so far consent to be engaged in. The day after he had been at his brother's, he met Swallow, who told him the meeting was to be at the cabin three days after. He went to the cabin between eleven and twelve at night; he took no weapon with him; he was the first there. His brother, Earl Parkin, and the other prisoners at the bar, were there, but no other persons. He himself had been there nearly a quarter of an hour before the rest came. They came at different times. Swallow asked him, how it liked that he had brought no gun or other sort of weapon with him. He told him he thought he had no occasion. Swallow and Batley put their shirts on the top of their coats, and their faces were blacked with soot from the chimney. They remained near a quarter of an hour there, then they set off up Liley-lane towards Grange Moor, which was towards Moxon's house. He swears, that when they met at Earl Parkin's, Swallow who told him to go to Grange Moor, did not tell him what they were to do, nor when he afterwards met him; and told him the particular night he was to go there; that he never heard of any design upon Moxon's till they were within about two hundred yards of the house. He says, that when Swallow asked him whether he had brought fire-arms, the witness answered, that he had not; Swallow said he had a good mind to shoot him for not bringing something with him. The witness's face was not blacked, nor his shirt over his coat. About two hundred yards off Moxon's, Swallow said, "There is old Sammy Moxon's, he has got some money, we had as good go and take it." That was the first which he heard of Moxon's. Earl Parkin speaks of its having been mentioned before; but this witness certainly swears, that he had never before that heard Moxon's name; that he had understood he was to go and meet the Ludds, on Grange Moor, and heard of Moxon's in the way he has now mentioned; Swallow, a few hundred yards off, saying that Sammy Moxon had got some money, and they might as good go and take it; and that when Swallow talked in that way, he said, "If that is all you want, I will go no farther;" and Swallow said he had a good mind to shoot him for so saying. He said he did not mind what he did with him, he would go no farther. He stopped about two hundred yards from Moxon's house. He remained there. He heard no noise at all; by

which I suppose he must have meant that he heard no gun; or whether he means to confine it to his hearing no disturbance, I do not know. He did not see Joshua Peace that night. He stayed nearly ten minutes before the party came back. That is speaking of time very much at random, for they must have been, according to the account of the witness Moxon, very near an hour in the house. They brought some sort of clothes with them. He saw nothing else. He went with them as far as where they dealt them, which was Grange Moor-side, in a little shrog bottom. He had nothing. Swallow asked him if he meant to have nothing? And he swears he said he would have nothing to do with what there was. He has not seen Swallow since that time till now.

He says, upon his cross-examination, that the first time when Swallow told him there was to be a meeting at Grange Moor, his brother, Earl Parkin, was present; that he was present when he agreed to meet them at the Moor. Afterwards the Cabin was appointed, and they were to go there. He is sure no notice was taken of their being going to Moxon's while they were at the cabin; that if any thing was said as to going to Moxon's before the time he has mentioned, he never heard it; and he has heard what his brother, Earl Parkin, has said, about their all going to Moxon's; and that they told him of it within two hundred yards of Moxon's. He never got over any stone wall, but over a hedge before that wall, across the close, on an occasion that he alluded to, and afterwards came into the road again; he might be about ten or twenty minutes. He joined the party again before they reached the lane where he finally stopped; he came up to them about twenty minutes before they stopped. He saw nothing of Peace, and they did not mention him. He never heard a gun fired. He says it was not a very still night; it blew a strongish wind; it was not more than two or three hundred yards from the place where he stopped finally. He says he did not step in the lane at all to watch. He saw no person passing. He says, that at the first meeting at his brother's, he was told he was to meet on Grange Moor some Ladds. He did not see them get over any wall, but there were many pieces of wall between Peace's house and Moxon's.

Joshua Peace states himself as living about two hundred yards, or not much more, from Moxon's; and that his (the witness's) house is about twenty yards from the side of the highway. Moxon's house is nearest Grange Moor. Going from Bedford's cabin to Moxon's, you pass the witness's house in the way. He says he heard of the stir at Moxon's, the morning after it had taken place; and then he tells you, that he was out himself that night between eleven and twelve o'clock; that he was returning from Sheard, the cow doctor's house, and was coming from Liley-lane. In coming from thence he met some men in the way to his own

house. There appeared to be about half a dozen of them. He met these persons about 160 yards from his house, in the road. As he was meeting them, they ran back again, to prevent, as he thought, any person seeing them. He says he sharpened after them, to see if he could know who they were; and they got over a wall. The witness got very near them as they got over, within a yard, and stepped up to look at them; they ordered him to go on, and one struck at him with a sword. The witness jerked back, to avoid the sword. Two of them appeared to have their shirts upwards. They bid him walk on, saying, "Walk on, good man." He stood still; and then a piece was fired over his head, at about six yards distance; and the shot passed a yard off him. Then they said, "Walk home, sir;" and threatened, if he did not, they would fire another piece at him. He went towards his house; and one of them walked by the side of the hedge to guard him: and he said, "Walk on, my good man, walk on." He attended him for about 50 yards. He went forward, part of the way home; but, not being quite satisfied, he turned back to see more; and, when he got back to the same spot, he heard a sound like the cocking of a gun or pistol; he pursued his journey farther towards Sheard's, back again; and he saw some of them at the same place where he had seen them the first time. They had come over the fence. Some stood still, and others ran from him. They might be six or seven yards from him. A man on the causeway pointed a gun at him. Nothing was said to him. He went on towards them; and they ran from him, upon the foot-path, towards Moxon's house. He passed them, and they swore at him, and flung stones at him; and a stake was thrown at him, which hit him upon the back. He left them, and went towards his own house. One followed him with a sword at the distance of about ten yards, till within about 150 yards of his house. He said, "You had *about like* to have met such quiet lads, or you would have been dead long ago." About six o'clock the next morning he heard of the robbery. He says, that he knew all the prisoners well before that day; but he does not, you observe, speak to the persons of any of them; but that he thought (this is a matter of thinking and belief only, and not positively speaking)—that he thought there was one man's voice that he knew, and that he believed it was Swallow's voice. That was the voice that said, that he was lucky to meet with such quiet lads, and so on. There was no other voice that he thought he knew in particular, unless it was Joseph Fisher's; there was a voice which he thought was Joseph Fisher's. He does not swear positively to that, any more than to the voice of Swallow. That voice, whosever it was, said, "Walk on;" and was the voice of the person who told him so to do.

Upon cross-examination, he says, That when he first met them, he was going to his own house. The conversation he had with them



might be half an hour, or not so much. The gun gave a right noise, a right crack; a man might have heard it, he thinks, a mile or more. He says he was somewhat in his cups that evening, not intoxicated, but according to his expression, he was not without beer. He will not speak with certainty to the voices, only that he believed them to be the voices of the two persons he names, namely, Swallow and Fisher. He says, the persons appeared to be altering their voices, and he will not swear that at the time he heard the voices, he knew that he had heard them before, but that he imagined them to be something of the sound of their voices. This is the evidence which this man has given; the effect of which is, his having met them as the accomplice had stated; he however not speaking positively to the person of any of them, but confirming the accomplice in the circumstances which he has detailed as having passed, namely, their pursuing him, intimidating him, and firing at him, and bidding him get away. He confirms in all these respects the testimony of the accomplice, who states that all this passed while they were in the way to Moxon's house; and he goes farther (it is nothing but belief, certainly) speaking as far as he can to the voices of Fisher and of Swallow, but not speaking with any degree of certainty to their voices.

They have then called Alexander Littlewood, who is a clothier at Flockton. He says, that he met Swallow on the 6th day of July last; he knows that was the day, because it happened to be Wakefield fair. He had been at Grange Ash. In returning he saw Swallow, and had some conversation with him about the times. Swallow said to the witness, "How do times go on with you now, lad?" He said they were very hard times, that he could not get bread and ale for a working man. Swallow said, if he was in the line he was in, he should have no need to work. He says, that he (the witness) said, that was the right line, that is, that line in which there was no need to work; and then he pointed to a public-house, and said, "Dost thou see Nourse's there?" he said, "Hast thou heard what has been done at Moxon's?" Witness said, "Yes;" and then, according to this witness's account, Swallow said, "Damn it, we got nothing there but nine or ten pounds of butter, and three notes, and two or three clothes." Whilst Swallow was with him, Joseph Roberts and William Sykes came up. They were standing side by side upon the course; and Swallow threw himself down, and laid himself flat upon his belly, at the approach of Joseph Roberts, and lay on his face. Sykes came up just after, and then Swallow got upon his knees and hands, and began (as the witness expressed it) making himself drunk, appearing to sham drunkenness; that was while Roberts and Sykes were there.

Joseph Roberts has stated, that on the 6th of July, at half past ten o'clock at night, he saw Lex Littlewood and John Swallow; that Swallow was lying on the ground, on his belly,

next to Littlewood; Littlewood was sitting upon the grass. William Sykes was following on the high road, a short distance.

Then Sykes is called, who says he saw Littlewood sitting on the grass; that Swallow was with him; that Swallow was lying on his belly, and when he came near him, he began spreading his arms to catch hold of him, but he got out of the way. Then he says, that he cannot say whether he was drunk or not; that he did not appear to him to be drunk, but is a freshish way.

They have then called Samuel Stocks, a clothier, who says that he was a prisoner for debt in this Castle when the four prisoners were brought here; that he knew them all many years before they came here; that Lumb lived about three quarters of a mile from him, and he saw him the Sunday morning after he came here. Fisher, he says, came to him; that was after he and Lumb had had a discourse. He says, that he asked Lumb what he had done, to get here? he said, it was about Sammy Moxon's affair. The witness asked him who was there? he said, he was about twenty yards from the house, but never was in the house; that he stood on the causeway in the lane, while they were plundering the house. And you will recollect this is the position and situation in which the accomplice, Earl Parkin, had stated this man being placed. He says that Lumb said he had some part of the plunder, that Parkin carried it to him. He says that after this, Fisher came in, and they both repeated it was along with Swallow and Earl Parkin, or they never would have been there. That was said both by Fisher and by Lumb. Sometime after this, Swallow and he were together in the gaol, and Swallow told him he was at Moxon's; that he had told Swallow what Lumb had told him, and that he found it would be of bad consequence; that Swallow replied, it was done, and it could not be helped. According to him, he engages in these conversations at these different times. Three of these prisoners, that is to say, Swallow, Fisher, and Lumb (and he speaks of all of them) acknowledged to him that they had taken a part in this transaction.

He is cross-examined, and he says, that he came to the gaol on the 19th of June, for 102l. which he owed to one Williams, a debt contracted in Wales; he got rid of that debt; he was superseded, as far as we can collect, for want of proceedings against him. He is then asked as to some ill will which he may have against one of these prisoners, namely, Swallow. He states, that he did bring an action against Swallow, and one Noble; he cannot tell how long ago, it may be seven, eight, or three years; that it was an action for slander Swallow had propagated against him, in saying he had killed a sheep, which, he says, they could not prove, but that they were much set against him, and had forged this account, about which they stood the action. What became of it, does not appear, but only that

he paid his attorney some money; he says he owed Mr. Blackburn, the attorney, something for his costs; that he does not bear any sort of ill will against any of the prisoners; and that Lumb and Fisher had nothing to do with this charge about the sheep, so that it cannot be supposed he bore them any ill will about that slander. Swallow, he tells you, was tenant under him, of a cottage, and they could not agree upon terms for which he was to continue tenant; and after that it was that Swallow propagated that scandal which produced the action which the witness has stated. This is his evidence.

They have then called Mr. Allison, who attended the magistrate, Mr. Radcliffe, as clerk, on the examination of the several prisoners. He states, that there were no threats or promises made to them, to induce them to make confession; he proves the examination of the prisoners Batley, Fisher, and Lumb, which took place on the 14th September last.

The first person whose examination is entered on this paper, is of Batley; and he states, "that he was not in Samuel Moxon's house at Whitley Upper on the night of the 4th of July last, nor had he a gun, nor a pistol; that he was near the house at the time, but was not within the house." Now if he was near the House at the time, and was there for the purpose of assisting those who were within the house, by watching, or receiving any thing out of it, he would be equally guilty with those who were within. He has not denied that he was there, but on the contrary expressly admits that he was near the house, though not within it.

The next examination is that of Joseph Fisher; and his account is, "that at the request of Swallow, and Earl Parkin the accomplice, he went with them on the night of the 4th of July, to the house of Samuel Moxon;" and as he would account for his so doing, he says, "being intimidated by the threats of John Swallow and Earl Parkin, who threatened to kill him if he refused to go." He admits, therefore, that he went, but ascribes his conduct to the threats of Parkin and Swallow operating upon him. That is the way in which he represents it.

Lumb says, "that on this night he was in company with Swallow at the public house, where Swallow produced a brace of pistols, and asked him to go with him to Samuel Moxon's; that he went with Swallow till within about a hundred or a hundred and fifty yards of Moxon's house; and there he stopped as he says) and did not assist in robbing the house, nor had he any part of the plunder." He puts it, therefore, upon this; that Swallow having produced a brace of pistols to him, saying, that he had a gun, he did go with Swallow till within about a hundred or a hundred and fifty yards; and there stopped, and did not assist in robbing the house, nor had any part of the plunder.

Gentlemen, these examinations closed the  
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evidence that was laid before you on the part of the prosecution, against these several prisoners at the bar.

The defence consisted in repeating each their plea, of not being guilty. And for the prisoners, a witness of the name of George Armitage was called, who states, that he is chiefly a farmer, at present at Kirk-Heaton, in which parish Moxon's house is; that he has lived there ever since he was born. He is called to discredit Earl Parkin, not in reference to any particular transactions he has related on this occasion, but with respect to his general character, and his unworthiness of credit on any occasion when called upon to speak upon his oath; and he states that he knows Earl Parkin, that he has known him two or three years, ever since he wrought at Bradley's mill; he has seen his manner of going on, and from what he has heard and known of him, he would not believe him upon his oath; that he does not know what other persons might do, but he would not believe that man, Earl Parkin, upon his oath. This is the account he gives, and that he was brought here upon subpoena for these men.

Mr. Wright, a debtor in the gaol, says he has known Lumb more than ten or fifteen years, and that he never heard any thing against the character either of himself or any of his family.

It is upon the evidence which has been laid before you, gentlemen, that you are to decide how far you are satisfied this charge of breaking and entering this dwelling-house of Samuel Moxon, and stealing the property mentioned in this indictment, is brought home to all or any, and if to any, to which of the prisoners. That the house was broken open, and by persons under circumstances of terror, which induced William Moxon to open the house, and therefore that it was broken open, is not to be disputed; and that it was performed in the way Moxon has related, two of the persons (and that is a circumstance for your consideration) being disguised with shirts, or something like shirts, over their coats. To the persons of any of the men there, it is not in his power to speak. Nor is any part of the property which was taken out of that house, found in circumstances to affect the prisoners at the bar. It is for you to decide how far the evidence laid before you will or will not justify you in saying that they are guilty. There is the accomplice Earl Parkin, and about the credit that is due to accomplices I hope I have stated to you enough to enable you to form your judgment, whether there are or are not sufficient circumstances in this case to satisfy you that, had as he is (and most unquestionably he is a very bad man), he has in the main of the evidence he has given before you, and in which he would implicate all the prisoners at the bar, spoken truth. He has stated where it was that they set out from. He has stated the disguises, which two of them whom he mentions had, namely, their shirts over their clothes. Those disguises Moxon spoke to as

having been about the persons of two of the men who entered the house, whoever those men are. Parkin speaks to their two names. Ratley and Swallow he states to be the persons who so dressed themselves. He states the part which they all took in the business, and the final division of the plunder they had got from the house. He states a circumstance which took place as they were going there, and it is material for your attention, because Peace, I think, is a very material witness for you to take into your consideration, as confirmatory of the account which the accomplice has given; for he has stated his being met, in the situation which Parkin has described, by that party, as they were going in the road to this house of Moxon's. In those circumstances which Parkin has stated, the witness Peace has confirmed him, namely, the firing a gun over his head, by way of intimidating him, and making him desist from the observation he was taking of these men. That fact is stated by Peace to have taken place. Another circumstance was, the throwing of a stake after him. Parkin positively swears to the fact, and Peace, who has detailed very circumstantially all this transaction, confirms him. He says he knew all the prisoners before this time, but to the persons of any of them he does not undertake to swear. He swears however to his thinking and imagining that the voices he heard, and who spoke to him, one telling him to go on, and another that he had good luck to meet with such fellows, were the voices of Swallow and Fisher; not positively swearing to them, but, having known them before, he thought and believed at the time that they were their voices. However, upon that subject he concluded his evidence with saying, that he would not swear positively to them.

Then there is the evidence of Samuel Parkin. Perhaps there might be some doubt whether he himself was or was not an accomplice engaged in this transaction of going to Moxon's house. However, the account of the matter which he has sworn to is this, that he was bad enough to agree to go to a meeting of the Luddites, which was to be held upon this moor, that meeting having been proposed to him by Swallow; the appointment being afterwards changed to this cabin, from whence, according to his account, they were to proceed to meet the Ludds upon this moor; and he swears that he set out from that house with no design whatever of going to Moxon's, or with any intimation that any such scheme was on foot among any of the party, as that of attacking Moxon's house, till they came to within two hundred yards of it, and that then it was, that, for the first time, it was proposed that they should attack that house, Moxon having money; that he then declined, and said he would go no further, and that he stopped there: why he did not then return home, is difficult perhaps to be accounted for; but the evidence is, that he waited there till the others did return, and that he went with

them to the place where the plunder was shared, but that he had no share in that plunder when it was so shared. His brother, who is unquestionably an accomplice, had stated, that in the cabin that has been mentioned, where they all met, the subject of their going, or intending to go, to Moxon's house, was talked over, and he presumed his brother heard it; but his brother swears positively that he never heard any such conversation, nor any intimation at all of their intention of going to Moxon's till the time he has stated, when, according to him, he ceased going any further. He did not, it seems, in his way see, or does not give any account of having met with Peace; but it is possible that what passed between him and the others may have passed when he was gone over, as he mentions, into the field, and had left them for a time, on some occasion, after which he says he joined them again.

Gentlemen, you have then, in confirmation of all this evidence, the testimony of Littlewood, who states the conversation he had with Swallow on meeting him in three days after, and his talking about hard times; that he questioned him whether he had heard what had been done at Moxon's, and on his saying "yes," replied with an oath, "We got nothing there but nine or ten pounds of better, and three notes, and two or three clothes." This man speaks to Roberts and Sykes coming up, and to Swallow, upon that, turning himself on his belly, and putting on the appearance of drunkenness which, whether real or counterfeit, Roberts confirms the account of this witness of his having assumed.

There is also the evidence of Stocks; as to conversation having passed between him and Fisher, and Lamb, and Swallow, in this goal, in short, with three out of four of the prisoners; which certainly does amount to an acknowledgment that they had taken part in this transaction which is imputed to their charge. Some impeachment was offered of his testimony, by insinuation, that all that he had said might proceed from some ill will retained by him on account of a slander, which is supposed to have been uttered by one of these prisoners against him, and for which he brought an action accusing him, in substance, of sheep stealing; but that applied only to Swallow. There could be no reason why any such circumstance, as Swallow having accused him of stealing sheep, should induce him to bear malice to the other two prisoners, to whose confession he has spoken. He states, however, that he does not bear them any ill will.

There are then the examinations of three of the prisoners, all the prisoners, with the exception of Swallow; who have given the account which has been read to you.

Upon this evidence it is for you to say, how far you are satisfied that the case is made out against the four prisoners at large, namely, that they have been all concerned and taken a part in this robbery; that they were some of them

in the house committing the robbery which was there committed, and others at the outside of that house, aiding and abetting, having gone there for that purpose. If you are satisfied that this is the case, there is proof, in my opinion, to find that the house was, in law, broken open upon this occasion. If you are satisfied with the account Parkin has given as to all of them, it will be your duty to find them guilty. Parkin is undoubtedly a very bad man, and one of the witnesses says he would not believe him upon his oath; but it does not rest upon the evidence of Parkin alone, nor is it fit it should rest upon his evidence alone. You have heard the confirmation he has received; and the only question is, whether in this instance you do not find him so confirmed, as to be induced to give him credit for his narrative, which will implicate all the prisoners in this transaction. And if those circumstances are proved to your satisfaction, which you have heard detailed in the evidence, the case will be made out against all the prisoners at the bar. It will be for you to give that verdict respecting each of the prisoners, which will satisfy your conscience, and which will accomplish your duty to the public and to the prisoners. If any thing is offered to you in the course of the evidence, which enables you to think you can make distinctions between the cases of the prisoners, it will be for you to make such distinction. If the evidence does not satisfy you of the guilt of the prisoners at the bar, you will acquit them.

The Jury retired at twenty minutes before seven, and returned in about ten minutes, finding,

John Swallow, John Batley, Joseph Fisher, Guilty; John Lamb, Guilty, but recommended to mercy.

Mr. Baron Thompson.—Gentlemen, I must beg the favour of your stating the grounds on which you recommend Lamb to mercy.

Foreman of the Jury.—We find that he has acted under the influence of Swallow; he had no fire-arms, and had not his face blacked.

Mr. Park.—And he had a witness to his character, which the rest had not.

Foreman of the Jury.—Yes.

Wednesday, 6th January, 1813.

THE KING.

against

GEORGE MELLOR, WILLIAM THORPE, and  
THOMAS SMITH.

The Jury were charged with the prisoners in the usual form, upon an indictment which alleged that the prisoner Mellor, on the 28th of April last, sent a pistol loaded with bullets, &c. at William Horsfall, by which firing he received a mortal wound on the left side of the belly, of which wound he languished till the

30th of April, and then died; and that the prisoners Thorpe and Smith were present, aiding and abetting Mellor to commit the said felony; and that so the three prisoners wilfully murdered the said William Horsfall.

The Indictment was opened by Mr. Richardson.

Mr. Park.—May it please your Lordships; Gentlemen of the Jury, You are now empaneled, and have been sworn, to inquire into the matter of blood. I need not tell you, that the offence with which the prisoners stand charged, is the greatest crime that can be committed in society. In the investigation of such a subject as this, the law, in conformity to the law of God, makes no distinction as to the person whose death is to be inquired into. The meanest subject of the realm is equally entitled to the protection of the law as the highest; and therefore it is no matter of inquiry, who or what the person was, whose death is the subject of that inquiry. The matter for you to investigate is, whether he came by his death by violent means; whether he came by his death from the malice aforethought, expressed or implied, of any individuals; and whether any, or all, of the individuals, whom you have now in charge, were guilty of that offence. That is the subject-matter of your inquiry. But in a case of this sort, which is of so much importance to the country, it is absolutely necessary, that, in detailing the facts, I should state to you the situation in which the deceased stood, and how he probably came to be the object of the attack of some persons: whether of the individuals now before you, it will be your anxious duty to inquire, and to decide by your verdict.

Gentlemen, Mr. Horsfall is represented to me to have been a man rather turned of forty years of age; he was a married man, had a family of children, and was in very considerable business, in the West Riding of this county, as a manufacturer. I had occasion to mention to some of you, yesterday (and it is a matter of general notoriety to you all), that, for a considerable period of time, dreadful disturbances have existed in this county; but they had not existed in this county, that I am aware of, at least not in any considerable degree, till the two learned judges, who are now sitting here, had returned to their homes from Lancaster, at the Spring Assizes of last year. But it is perfectly well known, it is a part of the history of our country, that at the Spring Assizes of that year for Nottingham, a great number of persons had been tried for breaking the stocking frames, and other machinery, connected with the manufactures of that county. About that period a similar disposition manifested itself about Huddersfield, and other places in that part of this county, to commit outrages upon manufactures. And about the 11th of April, a very violent attack was made upon the mill of a Mr. Cartwright, which will be material in respect to the evidence that will be laid before you to day. It afterwards appeared, and will

be proved to you; that in meetings, where the three prisoners now before you were assembled, there was great abuse thrown out upon the master manufacturers, in their presence, and by them, particularly upon Mr. Cartwright and the deceased.

Mr. Horsfall is represented to me, to have been a man who had upwards of four hundred persons at work under him, extremely beloved by his men, and they greatly attached to him. He had very large manufactories, of course, from the employment of so many men; and he employed the machinery which was the object of the abuse of these misguided people. I have not the means of making such observations as I have frequently and lately heard made, upon the delusion which has prevailed upon that subject, amongst the lower orders. It has been supposed that the increase of the machinery, by which manufactures are rendered more easy, abridges the quantity of labour wanted in the country. It is a fallacious argument: it is an argument, that no man who understands the subject at all, will seriously maintain. I mention this, not so much for the sake of you, or of these unfortunate prisoners, as for the sake of the vast number of persons who are assembled in this place.

I hope that my learned friend on the other side, will give me credit, that I mean to state no facts as bearing upon the prisoners at the bar, that I shall not, as I conceive, bring home to them. But I cannot help making general observations upon the subject, to draw their lordships' attention, and yours, to the case itself. I would rather, for perspicuity's sake, go to the facts which constitute the crime, and then apply it to the prisoners. Mr. Horsfall was a man, I understand, of warm feelings, of great and good understanding, and who saw the fallacy of these arguments; and he, perhaps imprudently (though I do not think so, for I do not think any man acts imprudently, in stating his sentiments on a subject which has been under his full consideration) he, I say, stated he would support this species of machinery, because he was sure it was advantageous to the country. He was perfectly well known, in consequence of the part he had taken in reference to these disturbances; and it was proposed by some persons, that he should be taken off. It was perfectly known, that Huddersfield market was one he was in the habit of attending, and which was held on Tuesdays. He went to that market, and returned between five and six in the afternoon of the 28th of April, at which period of the year we are considerably past the Equinox, and it will be proved, if necessary, though your own understandings would remind you of it, the sun does not set till about a quarter or twenty minutes after seven; the consequence of which was, it was perfectly light.

This gentleman was riding from Huddersfield market, on horseback, towards his own house, which was at Marsden (I believe about seven miles). He had rode as far as from

Huddersfield up to a house called the Warren House, which is a public-house, kept by a man of the name of Armitage, who will be called before you. He at that house stopped to get some refreshment, still continuing on horseback. He drank a glass of rum and water, and seeing there two persons whom he knew, he gave to each a glass of gin and water, paid for it, and rode on as far as the corner of a plantation, two or three hundred yards from the Warren House, belonging to Mr. Radcliffe, the magistrate. This plantation on the back of it opens into a field, then there is a second field lower down towards the south, a third field towards the south, then the road from Huddersfield to Crossland crosses, then there is a way into Dungeon Wood, then there is a house belonging to Joseph Mellor, a cousin of the prisoner George Mellor, and a road to Holmfirth, past Armitage Bridge. At the corner of this plantation, this unfortunate gentleman, Mr. Horsfall, was shot. He immediately fell upon the neck of his horse, called out "murder," and soon after fell to the ground. There was a person of the name of Parr, who will be called to you, riding a little way behind, who did not know Mr. Horsfall, and Mr. Horsfall did not know him; but immediately on hearing the report of the pistols and seeing him fall, Parr rode up, and heard him call out "murder." "Sir" says Mr. Horsfall "you are a stranger to me, and I to you, but pray ride on to Mr. Horsfall's house, and get assistance," meaning the house of his brother. Mr. Parr said, "Are you Mr. Horsfall of Marsden?" he said, "I am." Upon which Parr rode back to get assistance, and a person of the name of Bannister rode up and supported Mr. Horsfall in his arms till a cart came up, in which he was carried back to the Warren House, where he languished thirty-eight hours, and then died. This is the body of the crime.

Now, gentlemen, I would here make one observation in point of law, upon the indictment which has been stated to you. My learned friend stated only one pistol as having been fired, and that was all that it was necessary to state in the indictment. I believe the fact to be, that out of four persons that were in company, two fired; but that is immaterial. It was quite sufficient to state one, and no matter by which it was fired. Though the indictment states the pistol to be fired by George Mellor, if it was fired by either of the other prisoners it would be the same. I state this, because it is better you should not have your minds wavering on points of no significance in law.

This clearly is murder in some persons. There was no prior conversation, there was no previous malice between Mr. Horsfall and any of these persons; and therefore murder it must be in those who gave the mortal wound. The question is, is it murder in all or any of the prisoners at the bar? Now I proceed to state to you the way in which I shall establish

that. It will be asked, how many persons were concerned in this murder? I state four; and I state it upon the evidence of the witness Parr, who saw the fire (whether of one, or more, I will not say), but he saw a fire coming from that plantation, he heard a report, and he saw four men.

I go no further upon that part of the evidence, till I state to you that I shall call one of the accomplices. To some of you, who were in that box yesterday, the law respecting accomplices was fully stated by one of their ordships, who was so good as to confirm what I had humbly presumed to state in the outset upon that subject. I make no further observations upon that, because, though I believe the other learned judge will take the trouble of summing up this case to you, I have no doubt the law will be stated in the same manner. The witness I have to present to you, I state in the outset, and would therefore save my learned friend the trouble of calling witnesses to prove that an accomplice in burglary, or in the more heinous crime of murder, is a wicked man. I will suppose him to be as wicked as any of the prisoners at the bar, supposing them to be guilty; but then the question is (as his lordship told the jury in your place yesterday), is his evidence so connected, so well digested, that it brings credit with the nanner of telling it? and is he confirmed in some of these circumstances which it is impossible to confirm him in; if he has not been speaking the truth? And it need not be a confirmation of him in all the circumstances, for if we could prove all the facts without him, we should then leave him to take that fate which his offence deserved, instead of making him a witness. Therefore, leaving that matter of accomplices here, I shall call this accomplice, whose name is Benjamin Walker, and he will tell you that there was a great deal of conversation about machinery among the cloth-dressers, on many days, particularly after the firing at Mr. Cartwright's mill, where there were some persons killed; that this raised a great indignation against the masters, in the shop of John Wood, where this accomplice worked with Mellor and Smith. The prisoner Thorpe, worked at the shop of a person of the name of Fisher, very near to Wood's shop, near Longroyd Bridge. It seems, unfortunately, it was the constant habit (as will be proved to you in this case) amongst all the workmen, to read accounts of what had been doing at Nottingham. And this business of the mill created such desperation among them, that Mellor (who appears, from the evidence I have to lay before you, to have been the ringleader in this business) declared in the shop that he was determined to have Mr. Horsfall taken off. This I shall prove to you, by witnesses, to have passed before the fact; and I shall prove it, to confirm the accomplice. The accomplice knew nothing of his particular intentions as to the period of time, till the very day it happened; and he will tell you, that, in

the afternoon of that day, at that period which is called their drinking time, about four o'clock, Mellor called him into the room where he was (they not working in the same room), and there he disclosed what he was about to do that afternoon; that they were determined to way-lay Mr. Horsfall in coming from Huddersfield market, and assassinate him; and that he must be one of the party. Walker will tell you that this proposal took him by surprise; that at first he refused to have any thing to do with it, and that he was so discomposed at it that he did not go to his drink, but returned to his work; he will tell you that Mellor afterwards came to him, and called him into his room, and there he found Mellor with a bottle-green top coat on, which will be a most material fact in this case; that on his going with him into his shop, he gave to the witness a large pistol with a fluted barrel, loaded almost up to the top; and Mellor himself had a larger pistol with him. Gentlemen, this pistol, which Mellor had with him, will produce conviction as against that man, young as he seems to be, and melancholy as it is to see so young a man so desperate a character. It seems he had been in Russia, and brought home with him this pistol, which is of a peculiarly large size, with a brass mounting. That pistol he had either sold or given to a man, on some transaction respecting pigeons; but a person of the name of Hall, who was intimate with Mellor, and who will be called to you as a witness to-day, and whom I do not state to be an entirely innocent man, for he knew these facts beforehand—but you must take men as they are, and as the circumstances of the country place them—he had bought this pistol, and had it in his possession, and will prove to you that Mellor came that afternoon and borrowed this pistol of him, and loaded it at Hall's house, at a place called the Yews, which is half way between Wood's shop and Dungeon Wood; he loaded it extremely high; he put in a double charge of treble powder; he put in one ball of the same kind which will be produced to you; he then beat another, or two, rather flat, and cut them into slugs, and put them as well as another ball in, and rammed them all down. You will find this charge was so great that when he committed the fact, his finger was shattered by it, and that will be another material circumstance in this case. The witness said to him, "I hope you are not going to fire that?" to which Mellor said, "Yes, I mean to do for Horsfall with it; will you go with me?" Hall refused to go, and Mellor took the pistol out with him under his great coat, saying it should be done. So far we go at present, with respect to Mellor.

The prisoner Thorpe was seen by this same witness to load a long horse pistol, at Wood's shop, with balls and slugs, in the presence of Mellor. They both of them said it was to shoot Horsfall. He was again asked by some of the prisoners to join, but he refused, and then Smith or Walker swore that he would go.

This man's previous knowledge I have no difficulty in saying, he ought to have communicated, if he believed it; and the only possible reason why a man should not have disclosed so heinous a transaction, ought to be, that he did not believe they would do it. But these declarations prove the state of the country, that they had no difficulty in making these communications, which other men never would make if they were wicked enough to meditate the crime, and which hardly any of these men would have made under any other circumstances than those before him.

Gentlemen, it will be proved to you further by the accomplice Walker (and I only stepped out of the way to show how he was confirmed) that he really objected to going; but he was told, "As I have told you I mean to execute this to-night, and you now know the secret, if you do not go I will shoot you." And the man says that he went accordingly. Smith and he were told to go together, and they went up the road-way to the corner of the plantation. Mellor told them where to go, and Smith said, "I know where to go." As they went along the road, the accomplice said to Smith, "We really had better not meddle with such a thing as this." "Why," says he, "we had better go there, because if we go back they will suppose we have told, and we shall be shot" (I state this in favour of Smith); "but we will endeavour to persuade them not to do it." And they went on. The other two men did not go up the road, but went across a place called Dry Clough close, and up that way to the corner of the plantation. Thorpe and Mellor were at the point of the plantation nearest to the road. On their arrival, Smith went to them, as he told the accomplice, in order to reason with them against the doing this act; but he shortly came back and said, "I have not been able to prevail; we are to stand at a little distance from them, and we are to fire our pistols if they should miss, and they are to whistle or to give notice when Mr. Horsfall comes." A stone had been removed out of the wall to command the road; and soon after it was called out that Mr. Horsfall was coming, Mellor and Thorpe fired. As soon as they had fired, they retired into the back part of the wood towards the other two men, and told them they were afraid, or used some expression to denote timidity or effeminacy of conduct: "You should have fired at all events." Thorpe gave his pistol to the accomplice. Whether he meant that he should carry it off, and himself be relieved of it, I know not, but he put it into his hand. The pan was then open, and the lock down, shewing that it had been fired. You will find the materiality of this. On the way, Walker threw it down, and said he would have nothing to do with it, and Thorpe took it up and proceeded to Dungeon Wood; and then Mellor said, "We must separate." And accordingly Mellor and Thorpe proceeded westward across a footpath by the Yews up to Wood's

shop: and that very night Mellor showed himself in Huddersfield, for a very good reason probably; I do not know that it may be attempted in this case, but it often is in cases of this sort, that it might be proved he was elsewhere at the time. But the circumstances I have presently to detail to you, will leave no particle of doubt in your minds; and if it should be so that no doubt is left in these cases, it is a great consolation to those who have to administer the justice of the country. That he was seen at Huddersfield at some period that evening, I give, then, as a fact; but the distances are so inconsiderable, that the whole circuit, beginning and ending at Wood's shop, might be performed in about one hour and ten minutes. The accomplice's story is, that he parted with Mellor and Thorpe in Dungeon Wood, and that he and Smith went on to Honley.

Here for the present I leave them; and supposing nothing farther takes place, how shall I confirm the accomplice as to these facts? I shall confirm him as to there being four men by Parr, in the way I have stated. I shall confirm him as to the retreat of four men, for I have no less than three or four different persons who at different parts of the route saw four men running in the direction to Dungeon Wood, and getting over the wall into Dungeon Wood, and looking behind them for the purpose of discovering whether any body was within sight. And I shall prove this fact, which is decisive, that one of the witnesses, who has no more concern with this transaction, than any of you, saw in their getting over the wall a brass-mounted pistol from under the coat of one of them. It had discovered itself. He said, "There go Lude, and we shall have mischief to-night," not knowing what had passed with respect to Mr. Horsfall. Whether the prisoner heard this I do not know, but he looked down, and put the flap of his coat over the pistol. I do not know whether the witnesses will state that they knew the particular persons, but I shall prove these facts applying to four persons.

There is another circumstance I shall prove to you by the accomplice; that two of them had top coats of a dark colour, and the other two had common coats of a dark colour. I shall prove to you by Parr, that all the men had dark-coloured clothes. The accomplice will swear, that he and Smith had short coats; and to show that Thorpe and Mellor had the two top coats, I shall prove their going, after the murder, to the house of Joseph Mellor, the cousin of George Mellor, which is at the bottom of Dungeon Wood; I shall prove their depositing these top coats there, that they might go without them. I shall prove, what is decisive of this case, their depositing the two pistols there; the Russian pistol and the other. I shall call to you one of the apprentices of Joseph Mellor (the other has escaped, and does not answer his recognizance; but he shall be called upon it). I shall call the appren-

tice, with whom Thorpe went up stairs into one of their rooms, and hid these two pistols; and told him to give those pistols to his master, when he came home. I shall prove that they were afterwards shown to another apprentice. And I shall call the master, who at the time was at Huddersfield market, who will tell you he went up with his apprentice to that room, and the pistols were shown to him; and that afterwards, hearing that soldiers were about making inquiries, they took them from that place, and deposited them in the barn, and hid them there. I shall prove that one of those pistols, so deposited by Mellor in the house of his cousin Joseph, was the very pistol he had borrowed of Hall that afternoon; and I shall prove, moreover, that though Hall saw him load it, when he deposited it in Joseph Mellor's house it was unloaded.

There is another circumstance most material. It will be sworn by the accomplice, that Thorpe complained, in the plantation, of having wounded his cheek; and Mellor complained of having wounded his finger; by the recoil of the pistol, I suppose. I will prove, that Mellor declared, the next day, to another man, who was not of the party, that he had hurt his finger, by having over-loaded the pistol. Then as to Thorpe hurting his face; I will prove that George Mellor, who went with him to Joseph Mellor's, desired water for his friend to wash his cheek; and he accordingly got it. Gentlemen, are not these circumstances extremely strong to corroborate an accomplice? How is it in the ordinary chain of human events that you can get such evidence? I have for one always thought, before I dreamt I should have any concern in such an unfortunate business as this, and shall to my dying day think, that circumstantial evidence of this description has ten times the weight to satisfy the mind of a jury, of the positive declaration of a witness. For an individual may be wicked enough to swear to acts that do not exist; but a strong, well-connected chain of circumstances, will not hang together without being true; there would be such dreadful breaks in the chain, if they were not true, as would expose the fallacy in a moment. But, give me leave to say (for that is often misunderstood by gentlemen in your situation) subject of course to be set right by their lordships, that you are not to suppose that, because A. B. C. and D. who are witnesses in the cause, and have seen the same transaction, do not give exactly the same account as each other in words; therefore it is not true. Every slight discrepancy of the evidence in that respect, gives it confirmation. Such is the imperfection of human sight, that you and I perhaps, who mean to speak perfectly truly, may differ in some of the circumstances. But you are to look at the great mass of facts, and see whether the witnesses do not confirm each other.

I do not know whether I mentioned, that George Mellor borrowed of the wife of his

cousin, Joseph Mellor, a handkerchief, to bind up the hand of himself, or the face of his companion; and stated, that he wanted work for this companion. They asked the woman, when Joseph Mellor would come home; the answer was, "he seldom comes home much before ten; he is at Huddersfield." They proceeded to the Yews, and afterwards on to Huddersfield.

I have stated to you, that Mellor and Thorpe parted from the accomplice and Smith in Dungeon Wood. The accomplice will tell you, that they went down to Honley, and did not return till ten at night. At Honley they stopped at a public house, kept by one Robinson. So says the accomplice. Is that true? I shall call the accomplice, and the wife of the publican. The accomplice says, they had several pints of beer. I shall prove by the wife, that two young men (for so, unfortunately, they are, neither of them being, I believe, above twenty-three) were at her house, and drank several pints of beer. I do not know that she will prove that she knows them now. You will naturally ask, what made them take any observation of these young men?—There was a drunken collier in the house; so drunk, that he does not himself know any thing that passed. A person came in, and stated that he had, in coming from Huddersfield market, heard of the death of Mr. Horsfall; and Smith immediately began whistling, being a fine whistler, which drew attention to him; and he whistled so well, that this drunken collier got up to dance. And this is the circumstance that has brought it to the recollection of the publican and his wife; and they stated, that one of the young men whistled famously, not having the least idea that the accomplice had given this evidence, and mentioned that circumstance.

But I have not done with the case yet. I ought to tell you another reason why disclosure was so easily made to Hall, who was not an accomplice. Hall was a bed-fellow of the prisoner Mellor, and Mellor told him that night, or immediately after, that he had committed this murder, and that Thorpe and he had left their two pistols at Joseph Mellor's, at Dungeon, amongst some flocks, and had left word with the apprentices, that they must be given to their master when he came home; and then he said, "Thorpe and I went through Lockwood, and so to Huddersfield, and there we parted." These men being so intimately connected as to be bed-fellows, the wonder (even independently of other circumstances) was the less, that a communication should be made so freely. Smith was not a bed-fellow of theirs, but he slept in the same room. I stated to you, that he and the accomplice had gone to Honley, having buried their pistols, which were loaded, in some ant-hills. Hall will state, that it was late when Smith came home; and I ought to have told you, that it will not rest, as to declarations, upon the evidence of Hall or of the accomplice only, but on the tes-



timony of a person of the name of Sowden, whose evidence I will not go through.

The next day (though inquiries could not at that time be made to the full, and, as you are perhaps aware, were not made with any effect till the month of October last) it occurred to these men, that as inquiry necessarily would be made, there should be some more secrecy observed; and accordingly you will find, that Thorpe afterwards insisted upon the accomplice Walker swearing, in the way they have done in too many instances, never to reveal the fact. He pulled out a Bible, and administered the oath, which he had prepared. It was administered first to one of the witnesses, to whom I before alluded, of the name of Sowden, in consequence of their having acquainted him with their intentions the day before; and you will find Mellor was present at this. Thorpe afterwards brought in Smith, and Benjamin Walker the accomplice, John Walker his father (who was a workman in the same shop, and whom he supposed to have heard the fact from his son; but the father, I believe, will tell you, that the first he heard of it was from Mellor himself, William Hall, and another person. Thorpe said to Sowden, "you must administer the oath to all these, or I will shoot you." He complied, through fear of his life; and they all took it, except John Walker, who refused to take it, saying, he had never taken an oath in his life, and would not do it; and they said, "if you make any declaration about this, we will shoot you, or whoever it may be." The witness sometime afterwards met him in a field, when he said, "I am afraid it has been blown about that I have had a concern in the murder of Mr. Horsfall, and it is time I should be off to America." I shall prove also his declaration about going to America by another person. And he said to the witness, if he heard of his repeating it, he would shoot him; but the witness told him he had not.

Thus, gentlemen, do not I confirm the accomplice by such a variety of witnesses, that I feel almost ashamed of going through the statement? though I ought not to be ashamed of fully stating a case so materially affecting the prisoners. But it appears to me nothing can be clearer than this mass of evidence I have to lay before you. I am not aware that I have omitted to state to you any fact that is material. I have not gone through the detail of the facts, for that would fatigue you. One cannot but most feelingly lament, that young men, no older than these, should be charged with a crime of so deep and heinous a dye, as that which you are sworn to try; and therefore (as I said in the outset) you have a most important duty to discharge between God and your own souls. If these young men have not committed the murder, for God's sake let them go free; but if you see the finger of Providence pointing at them in as satisfactory a manner as if you had with your bodily senses seen the crime committed, however painful the

duty, it is your duty to pronounce them guilty; and guilt must be followed by punishment. For the law of God itself has declared, "Whoso sheddeth man's blood, by man shall his blood be shed." And it is said by the same authority, that the land can only be cleansed from the pollution it has received from blood, by the blood of him that sheddeth it.

The evidence, having been gone through, was summed up by

Mr. Justice *Le Blanc*.—Gentlemen of the jury, this, which has so long engaged your attention, is a charge brought against the prisoners at the bar, George Mellor, William Thorpe, and Thomas Smith, of the wilful murder of William Horsfall. It is not necessary particularly to call your attention to the manner in which the charge is made. The indictment charges that they or one of them, —and it is perfectly immaterial which, or whether one or two of them actually fired the pistol, or whatever piece it was that was fired; —but that one or other of them, firing a piece at Mr. Horsfall, inflicted the wound which occasioned his death, and that the rest were there. It charges them all as principals in the murder; and there is no doubt in point of law, that if all or any of the prisoners at the bar went out with a formed design, known to all of them, to waylay William Horsfall, for the purpose that either all or any of them (as should be most convenient) should take an opportunity of firing at him and wounding or killing him, and in consequence of that a shot was fired by any of them which produced his death, it is murder in all of them. There is as little doubt in the present case, that the person, respecting whose death we are inquiring, has been murdered; because there is no circumstance which has appeared in the case, which in point of law can make this otherwise than a murder of the foulest description. No question therefore will arise on the nature of the offence; and the only question you will have to attend to is, whether or not the evidence which has been laid before you, and which I will detail to you as well as I am able, shall or shall not satisfy you that the three prisoners charged with this offence, or any of them, are the persons who were so concerned in waylaying him and firing the fatal shot.

It will be only necessary just to advert to the time, as mentioned by the person who proved the fact. It appears that Mr. Horsfall had gone to Huddersfield on the 28th of April in the course of the forenoon, and had attended Huddersfield market in the course of his business. It appears that he was in the habit of going there; so that it was perfectly known that his course of proceeding was, to attend the market, and to go home again afterwards to his house at Marsden, at the distance of about six or seven miles from Huddersfield. It was in proof, by a person of the

name of Armitage, who kept a public house at Crossland Moor, called the Warren House, that he had seen Mr. Horsfall go to Huddersfield market in the morning; that he seldom missed going on a market day; that he had called at his house on his return back, and he says as far as he can fix the hour (speaking at this distance of time not very particularly, and no one can speak particularly as to time, unless his attention was called to it), it was a quarter before six in the evening that he stopped at his door, the Warren House, on his way back, being then on horseback. He says, that he drank a glass of rum and water at the door, and that there were two men of the name of Sykes, who were workmen and had been employed under him, whom he treated with a glass of liquor each, and he went away, never having got off his horse, but having stayed at the door about twenty minutes. So that according to his account, it was a few minutes after six o'clock when he left the Warren House, to proceed on to his house at Marsden. Then he says Mr. Horsfall rode homewards. He describes the plantation of Mr. Radcliffe, as being by the road side as he proceeded along. According to the map it is on the left-hand side of the road as Mr. Horsfall was going homewards. That plantation, he says, is something better than a quarter of a mile from the Warren House. So that according to his account of the time (supposing him to have stopped there about a quarter before six, and to have stayed twenty minutes, and to have set out five minutes after six) he would have had to go a quarter of a mile before he came to the plantation where this circumstance happened; which would bring it to a short time, probably, after six o'clock. He says, that it nearly half past six o'clock that evening, as nearly as he can recollect, some children brought the account to his house, that Mr. Horsfall had been shot. That tallies very much with the account he had before given of the time Mr. Horsfall had been at his door, and the period which must have elapsed before his unfortunate accident happened. He says, that he and the two men of the name of Sykes, who had been just before treated with some liquor by Mr. Horsfall, set out immediately, and so soon, that they had not finished the liquor Mr. Horsfall had ordered for them; that they found him sitting by the road side about thirty yards below the plantation, and rather nearer to his house than the plantation was. It appears that a person, who had been upon the road at the moment, had assisted in keeping him upon his horse for a time. He says Joseph Bannister was at that time with him; that he found Mr. Horsfall bleeding very much; that they got him down to his (the witness's) house as speedily as ever they could, and he died the next day but one. He is particularly asked as to the time, and fixes it at that hour, as nearly as he can recollect it. He says, that many people come into his house, and he is frequently looking at the clock to see when

their horses are to be ready; and that he is sure it was nearly half past six, when the news came that Horsfall had been shot, because a person went to look at the clock at that time. So that according to what he says, it must have been between ten minutes or a quarter after six and half after six, that this act (whoever did it) must have been done at the plantation.

The next witness is a person of the name of Parr, who gives this account: He was going home from Huddersfield on the same road that Mr. Horsfall was going; he passed this inn, where Mr. Horsfall had stopped, and before he got to the plantation he heard a very large crack, like the report of a gun or a pistol, and it seemed to him to come out of Mr. Radcliffe's plantation, out of that nook nearest to the public house where Mr. Horsfall had stopped; that he saw the smoke arising from the spot where the gun had been fired, and he saw four persons in that corner of the plantation. He says, that he was himself at the distance of about one hundred and fifty yards from the plantation, going along the road, at the time he heard this noise and saw the smoke, and saw the persons who were in the plantation; so that he was in a different situation from the person who was just abreast of the plantation in the road. So far things would have a different appearance, and persons might be visible in a wood or plantation from one point, who might not from another. He says that all the four persons, he so saw in the plantation, had dark-coloured clothes on; that at that time there was a person riding along up the road before him (that is, going the same way that he was riding); that after the report of this gun or pistol, that person's horse turned round as quick as possible, and the man immediately fell with his face upon the horse's neck; he raised himself up by the mane, and called out "murder." As soon as he had called out murder, there was one of the four men got on the wall with one hand and both feet; he called out to this man, and said, "What, are not you contented yet?" and immediately put his horse into a gallop, to ride up to the spot as fast as he could; and the four men ran out at the side of the plantation farthest from the road, that is, going the other way; he himself rode up to Mr. Horsfall, and perceived that the blood had just flowed on his breeches; he was sitting on horseback when he rode up to him; he said, "Good man, you are a stranger to me, I am shot;" and he seemed to fall sick, and was going to fall off his horse; upon which the witness held him upon his horse, and the horse went on a foot pace; and while he was holding him upon his horse, the blood spouted out upon his side; he then desired him to go to Mr. Horsfall, a relation of his near that place, and immediately he fell off his horse: that he put him straight at the side of the road; and that there were two boys, sons of Abraham Willey, a witness afterwards called before you, who were gather-

ing horse-dung upon the road, and that he called them, and left them with this gentleman who had been so shot, and galloped towards the other Mr. Horsfall's in order to inform him of what had happened. He describes this plantation as being narrow, not more than thirty yards over. He is sure he saw four men; that they were all strangers to him, he did not know them; he saw them walking about in the plantation, before he heard the crack of the gun or pistol, before he got up; and he says, that when Mr. Horsfall seemed to get up abreast of the plantation, that he observed one of the men stoop under the boughs of the trees, and then he saw the smoke and heard the firing, and that the other three seemed to be standing behind. That is the account given by this Mr. Parr.

Mr. Joseph Bannister, a clothier, states, that he was upon the road on the same evening, the 28th of April, and he fixes it at nearly half past six, when he met Parr, who had assisted Mr. Horsfall, and had left him in the care of the two boys, galloping upon the road. This tallies with the account which Armitage had given, that this happened by a quarter past six or thereabouts. He states, that immediately on being informed by Parr, of what had happened, he galloped up, and found Mr. Horsfall lying by the side of the road, very bloody; and that he was removed from thence to the Warren House, and he remained with him there some time.

At the Warren House he was visited by Mr. Houghton, a surgeon, who tells you, that he was informed he was sent for about seven o'clock; and that another professional gentleman had got to Mr. Horsfall before he reached him, he did not get to Warren House till between eight and nine in the evening, when he found Mr. Horsfall lying on the bed; that he appeared sick and pale; and his pulse was so much exhausted, that it was scarcely to be felt, it was a weak tremulous pulse; he examined him, and found two wounds on the upper part of the left thigh, three inches asunder; there was another wound on the lower part of the belly, on the left side; two more on the right thigh, and a slight bruise on the lower part of the belly. He says, one of the balls had been extracted before he came, and and he extracted another large ball from the inside of the right thigh, near to the hip joint; that he thought very unfavourably of him, and particularly as that one ball he describes as having entered on the left side (the plantation being on Mr. Horsfall's left hand) had penetrated from the left side to the right side, and had nearly penetrated the femoral artery, and that he had no well founded hope of his recovery from the beginning. In fact, this gentleman died the following day, and there is no doubt but that this wound which the surgeon points out, which had penetrated from the left side to the right, was the cause of his death. And the two bullets were produced, one being a pretty large bullet, almost the size of a musket bullet, and one which appeared to have

been cut and flattened. One of these was extracted by Mr. Houghton, and another by a gentleman who was there before him: they were produced by two relations of Mr. Horsfall, with whom they were deposited after they were extracted. That is the evidence with respect to the cause of the death; and to be sure there cannot be a doubt that this person being so shot at, as he was proceeding on the king's highway, it was wilful murder, unless it can be shown by some circumstances, that it was merely accidental.

Then they call witnesses, for the purpose of showing who these four persons were, that were seen in this plantation by Mr. Parr, who was following at some little distance after Mr. Horsfall, and who actually saw the fact committed; hearing the crack, seeing the smoke, and seeing the men run away out of the back part of the plantation after the deed was committed. They call first Benjamin Walker, a person who himself professes to have been one of these four men; and you are to attend to the account that he gives. I need not state to you that a man who is produced, admitting himself to have been one of the four men who lay in wait armed for the purpose of shooting another, and who had gone out because he was asked so to do, was himself an accomplice in the deed that was done; and that therefore he does not stand in the situation of a witness, to whom full and perfect credit is to be given. So far his testimony is to be received, as the account given by himself, and the corroboration given to it by other witnesses that shall be produced, may satisfy you that the account he gives is true.

Benjamin Walker says, he himself is a cropper, and that he worked as a cropper at the manufactory of Mr. Wood, at Longroyd Bridge, which is between Huddersfield and the place where this transaction happened; that he had worked there nearly two years: that it is a distance of only a quarter of a mile from Huddersfield; that Mellor and Smith worked at this same manufactory of Mr. Wood; that since April, Smith left that service, where he was an apprentice; that the other prisoner, Thorpe, worked at the manufactory of a Mr. Fisher, in the same business of a cropper, as he himself worked; and that Fisher's manufactory and Wood's are not more than two or three hundred yards distant from each other, both very near Longroyd Bridge; that he was not so well acquainted with Thorpe as with the other prisoners. He states (alluding to what has been heard perhaps in the county, but is not the subject of the present inquiry) that an attack had been made by a very mischievous description of people, on some manufactories or mills belonging to a Mr. Cartwright, some short time before; that on that attack on Mr. Cartwright's mills and premises, the assailants had met with a proper resistance, and in that resistance some of them had been wounded and killed; that they were talking, in this manufactory of Wood's, about what had hap-

peened at the attack on Cartwright's; and that they had said it was a hard matter that these men, who had attacked the property of others, had had the misfortune to be killed themselves, or wounded in the attack; that upon that occasion George Mellor said that there was no method of smashing the machinery, but by shooting the masters; that they had lost two men in this attack on Cartwright's. He further states, that the day Mr. Horsfall was shot, he was at work at Wood's; that George Mellor and Smith worked together in one room, and he (Benjamin Walker) worked in another; and that on that day, between four and five in the afternoon, George Mellor, the prisoner, came to him into the shop where he was at work, and he describes William Hall, and his father, (John Walker) and his brother (William Walker) as being in the shop at the time. He says that Mellor asked him to go with him to shoot Mr. Horsfall; that he did not consent at the time, and Mellor went away, and he himself went away to his drink. This was between four and five o'clock. He was absent about half an hour, and came back. That would bring it to about five o'clock. When he came back, he found George Mellor in the shop; one Farley was there, and Hall, and his father; and when Mellor came again, and gave him a pistol into his hand, loaded, and said that he must go with him to shoot Mr. Horsfall, and told him it was loaded with double ball. He lifted up his pan to see whether it was primed, and found that it was loaded nearly to the top, and primed. To be sure, gentlemen, it is an extraordinary thing to those who have not been in the habit of hearing such occurrences, that any men in this world should hold such converse so openly together; but this is the account given. Upon which this man (Walker) says, he said he would go with Mellor, and an order was given to go to Mr. Radcliffe's plantation, and he thinks that both the prisoners Smith and Thorpe were present; and Mellor directed Smith to go with this witness to the plantation. He says, that at the time the prisoner Mellor, came into the shop to him, Mellor had on a rab jacket, but afterwards when he joined him in the plantation (for he did not see him till he joined him in the plantation, he and Smith being ordered to go to the plantation and wait here for him), Mellor had on a bottle green top coat (and it becomes material, in considering the circumstances given in evidence in confirmation, to attend to the dress of the prisoner); and that the other prisoner Thorpe had on a dark-coloured top-coat. He says, that Smith and himself, who had been ordered to go first up to the plantation, had each of them a dark green coat on, but no top-coats. He says Smith and he got up to the plantation first, and that they went there by the high road most part of the way, but part of the way they went through the fields, and then they got into the plantation; that the prisoner Smith had a pistol with him: Smith told him it was a pistol which he (Smith) had bought of one Mills, and

that it was without a cock when he bought it, but that he had since put a cock to it; that when he saw it, it was loaded, as Smith told him. This man himself had a pistol, which Mellor had put into his hand, and put into his hand, as he says, ready loaded. He says, that when Mellor and Thorpe got to the plantation, he and Smith had been there about ten minutes. Mellor and Thorpe came over the fields, he thinks not the same way that he and Smith had gone. He says, that he had had some conversation with Smith, as he went along, in which he expressed to Smith that he did not quite like the business, they were going on, and that he was not for going any further. However, Smith said, "Let us go forward, and then let us counsel the others, to go back again; it is a pity to go." However, he says that Smith afterwards went up to the other two, when they were in the plantation, that is, to George Mellor and Thorpe, but that he (Benjamin Walker) did not go up with Smith, that they were at the distance of twenty yards, and when Smith came back, he told him that Mellor had said, that if they offered to leave him, he would shoot them dead. He fixes the distance, at which he says Mellor and Thorpe were from him in the plantation at that time, at about twenty yards. He says he himself could not see them at that time when they were in the plantation, but he himself was at the distance, of only twenty yards from the wall which separated the plantation from the road; that both Mellor and Thorpe were out of his sight, while they were in the plantation waiting for Mr. Horsfall's coming up; that he got sight of them again after the piece had been discharged. Their seeing one another, or not, must depend very much on the situation of the plantation, or the wood being more or less thick in the particular line in which they were viewed; they might not see each other, and yet they might be visible to persons looking from another point, as Parr describes himself to have seen them. I think there is no contradiction, in that respect. He says that he himself did not see either Mellor or Thorpe, but he had seen Mellor have a pistol before that time, and that he saw it in the wood after this job (as he calls it) was done; that Mellor's pistol was a large horse-pistol, the barrel of it nearly half a yard long; and that the account Mellor had given of it was, that it was a pistol that he had brought with him from Russia, where he had been, and that he had sold it to a man of the name of Hartley. Then Walker says, that when they first got to the plantation, Smith told him that the orders which they had from Mellor were, for them two to stand twenty yards distance from Mellor and Thorpe, and that they (Mellor and Thorpe) would stand in the nook of the plantation, by the road side nearest to the Warren House, and that he and Smith were ordered to fire, if Mellor and Thorpe missed Mr. Horsfall. The consequence of that was, that they remained, as he says, twenty yards off, Mellor and Thorpe.

being close to the wall at the corner. It was intimated before, that one of the other two was to give a whistle, to intimate when Mr. Horsfall was coming; that no whistle was given, but one of the people, and he thinks Mellor, said Mr. Horsfall was coming; that the wall which separated the plantation from the road was about a yard and a quarter high; that he and Smith got up when they heard Mr. Horsfall was coming. From that account, I should suppose they had been upon the ground before, but that the wood was so thick, he could not see what Mellor and Thorpe did, whether they lay down, or stood. But he heard the pistol go off, and then, he says, immediately upon the pistol going off, he and Smith fled a bit backwards, and directly after they were joined by Mellor and Thorpe. At that time Thorpe put his pistol into the witness, Benjamin Walker's, hand, saying, he would not go with it any farther, and at that time he saw Mellor's pistol in his hand; that Mellor, on coming up to them, swore at them, and damned them for not shooting. He said that he had shot, and that they ought to have shot, however it had been, whether the others missed or not; but, however, they did not shoot. He says, that at that time the pistol Thorpe put into his hand was warm in the barrel, and there was no priming, so that it had been clearly fired off. He says, he himself did not see Mr. Horsfall, for that he was in a thicker part of the plantation. This is the account he gives of what took place in the plantation, making the number of four persons agree with the account of four persons whom Parr had seen in the plantation as he rode up, just before the piece was fired and the report heard, which he gave an account of, and all in dark-coloured clothes, which, according to this man's account, they all had on. And then his account is, that after this had happened, they all four went straight forward out of the plantation over several fields, to a wood called Dungeon Wood, and to get to which they crossed a road which goes between the fields at the back of the plantation and Dungeon Wood, a road from Huddersfield to Crossland; that they crossed that road, and when they crossed that road to Dungeon Wood, they were going as fast as they well could; that they all got into Dungeon Wood together; that he threw Thorpe's pistol down before he got into the wood, in crossing the closes, and that upon that George Mellor took it up; that what became of it afterwards he himself, Walker, did not know; that when they got into Dungeon Wood, Smith and he hid their pistols in some ant-hills in the wood; and that in Dungeon Wood these four persons separated, George Mellor and Thorpe ordering the other two to go towards Honley, being a different way from that which they themselves were going; that upon that George Mellor gave them two shillings, because they said they had no money to buy any beer; and accordingly they (the witness and Smith)

separated, and saw no more of George Mellor and Thorpe at that time, but proceeded on to Honley, which is about two miles from this Dungeon Wood; that he had a powder-horn from Mellor before he went, which he says, he hid at the bottom of Dungeon Wood. Nothing particular turns upon that, for it was not found afterwards. Then he gives an account where he and Smith went to at Honley; that they went into a public-house, he does not know the name of it, it is at the bottom of Honley, on the left hand side; and he says there was a collier drinking there, who appeared to be pretty fresh in drinking; and that some men came into the public-house from Huddersfield market, and brought an account that Mr. Horsfall had been shot; and upon that being said, Smith, the prisoner, who whistles particularly well, fell a whistling; and that this collier, who was in liquor, was pleased with the tune he was whistling, and got up, and attempted to dance. That is mentioned as a circumstance, because you will find it confirmed by other persons not connected with the transaction, who remember what passed at the time from that circumstance. He says they drank as much as seven or eight pints of ale at this public-house, and left it between eight and nine o'clock, and it was near ten o'clock before they got home to their own house. That was the conclusion, according to his account of what passed that night. The next morning, he says, the prisoner Thorpe came into the shop at Mr. Wood's, where George Mellor worked, and then George Mellor sent a workman, of the name of Sowden, to fetch this witness, Benjamin Walker, into the shop where Mellor worked. He says he went in, and he there found George Mellor, and Thorpe, and Smith; and that then they ordered him to be sworn, in order to keep the counsel to keep it secret; and he says, upon that occasion the prisoner Thorpe produced a book, which he said was a Bible, and that Mellor said, he (Benjamin Walker) must be sworn; and that Varley, and Benjamin Walker's father, and a brother of his, William Walker, Sowden, and Hall, had been sworn; that he took hold of the book, and Thorpe read the oath to him while they held the book, but he does not know what it was that he read; and after it had been read, Thorpe ordered him to kiss the book, which, he says, he did. Then he gives this farther account; that Mellor told him that he had hurt his finger with the firing, and that the next morning when he saw him, his finger was tied up; that when they were in Dungeon Wood, after the deed had been done, the other prisoner's (Thorpe's) face was bloody, and the account he gave of it was, that he had scratched it or hurt it in the plantation. And he farther says, that the next day George Mellor told him that he and Thorpe had been at Joseph Mellor's, at the back of Dungeon Wood, after they had parted the day before. He is then cross-examined on the part of

the prisoners, and is asked, where he had been for some time past; and he says, that he now comes immediately from the Castle here; that he was brought to York a few days ago, that he had been at Manchester, and from thence at Chester ten or eleven weeks when he was brought here. He had been probably apprehended, or charged with being concerned in this foul transaction, and in consequence of that he was committed to safe custody, that he might be forthcoming, to have his testimony submitted to a jury, when this matter should be inquired into. He says he supposes it to have been about six o'clock when this affair happened; that a man of the name of Varley, William Hall and his father, and brother William, were all present when the pistol was delivered to him, and he expects that they saw it and heard the conversation; that Smith was in the other shop; that before firing in the plantation, they were never nearer than twenty yards to George Mellor or Thorpe, and that he was never in the nook or corner of the plantation; that he and Smith were behind, at nearly twenty yards distance. He is then asked when he first made this discovery: He says he first told this to his mother and to his father, the same night after he came home, and that his father had heard what they were about before; that his mother went to Mr. Radcliffe's about eleven or twelve weeks ago, in order to give this account, and to get her son examined (as a witness, I suppose); that Thorpe and Mellor had been taken up before she went to Mr. Radcliffe's; he says they were not all taken up together, that Mellor and he were taken together; that a reward had been offered for the apprehension of the murderers, that he heard from Sowden, it was 2,000*l*. He is then asked, whether he had sent any message to a woman of the name of Hartley; and he says, that while he was in custody, he sent a person of the name of Mary Dransfield to request Mrs. Hartley to go before the magistrate, to prove that he (Walker) had been at some other place at the time this murder was committed. He says, that he told Mary Dransfield that he had told Mr. Radcliffe that Mrs. Hartley was the first who came into the yard to tell of Mr. Horsfall having been shot, and that he thought she would be a safeness to him by showing he was in the yard at the time, which he was not; that he told a man of the name of Firth, that he knew nothing of the murder; that he was examined before Mr. Radcliffe, when he was first taken; that he had William Hall as a witness for him, and had sent to Mrs. Hartley to tell her that he had told Mr. Radcliffe that she was the first that came to tell Mrs. Wood, thinking she might say something to his advantage; and he says the reason was, that George Mellor had told him that Mrs. Hartley had been the person that had informed the people at the works of Mr. Horsfall having been shot. That is the account which is given by this witness, who certainly by that account makes himself

out to be one of the persons, who (if his account is true, and he had been standing at the bar) must have shared the fate, which the others will, accordingly as your verdict passes for or against them. Therefore, you will examine the different parts of the account he has given, and see how far there are different circumstances proved by other witnesses, which induce you to doubt the truth of what he has said, or to believe that the account he has given is true.

The next witness called, is a man of the name of William Hall. He does not stand here in the situation of an accomplice in this felony; but he does not stand free of blame, any more than several others who worked in this manufactory of Mr. Wood; because language, dangerous in the highest degree, appears, according to their account, to have been used among them, without much fear of exposure, as to liberties intended to be taken with the lives and the property of others. But he does not appear to be a partaker in this particular transaction. The account he gives you is, that he was a cropper, employed at John Wood's; that he remembers the day on which Mr. Horsfall was shot; that on that day George Mellor applied to him for a Russian pistol, about four or five in the afternoon; that was a pistol which George Mellor had brought from Russia; that he, William Hall, had bought it of a man at the top of Mirfield Moor, so that it belonged to William Hall; Mellor had sold it to one Richard Hartley, who sold it to somebody else, who sold it to Hall; and then he gives a description of it, that it had a brass hoop, and that the barrel of it was about a foot long; that he accordingly lent Mellor that very pistol that day. This, he says, was about four or five o'clock in the afternoon of this same day; and that is the same on which Benjamin Walker tells you application was made to him for the first time that he would be a party to go out with them to shoot Mr. Horsfall. He then relates, that George Mellor went home with him (William Hall) to a place called the Yews, which is just by their manufactory, and there he took the pistol and put it under his coat; that the pistol, when he gave it to him, was unloaded; that he saw Mellor load it at his (William Hall's) house; and that he put near two pipe heads full of fine powder into it, and then put one ball into it, and afterwards some slugs that he flatted out from other balls by hammers, and put them with the one bullet he had first put in; and he put in another ball at top, and he rammed them all down; that seeing him do that, he asked Mellor whether he meant to fire it, for he thought that the pistol would jump back if he did; he said, "yes," he meant to fire it, and meant to give Mr. Horsfall that; and that George Mellor set off directly. This is the account this man gives. He does not stand, I think, clear of blame by any means. Being applied to by Mellor to lend a pistol, he lends that pistol: he sees him load it in the

way he describes; and if he believed the man sincere, and suffered him to go out of his presence without giving an alarm, he cannot stand as an innocent man. However, this is the account he gives upon his oath. He says, George Mellor had before asked him (William Hall) to be of the party, and to go out along with him, and he said he did not like to go; that Mellor put the pistol into his pocket, and went away. Then he gives the same account as to the dress of George Mellor, as Walker had done; that George Mellor had at that time a bottle-green top-coat on, and an under-coat; that he had seen Thorpe that same afternoon in John Wood's shop, and that he was possessed of a pistol of nearly the same size with Mellor, and that when he saw him in the shop, he was braying some slugs at the window (which I understand to be hammering them out); that Benjamin Walker and Smith were in the shop at the time; and that when Mellor asked him (Hall) to go, and he refused, one of them said he would go. He then gives an account of what passed the next day in this shop of John Wood, the father-in-law of Mellor; that Mellor produced a Bible, and that he (William Hall) was called into the shop; that Thorpe was sitting there, and a man of the name of Sowden, and one or two other men whose names he cannot recollect; that a paper was read over to them; he says he does not recollect the whole of what the paper contained, it was something about "if ever we revealed any thing concerning that business, we should be shot by the first brother;" that the Bible had been put into his hand before, and after it was read over, he (William Hall) kissed the Bible. He farther says, that he slept in the same room with Mellor on the night Mr. Horsfall was shot; that when they were going to bed, Mellor said he had hurt one of his fingers by firing off the pistol, and he did not know whether it would be right again or not. You have heard the account which this man before gave of the manner in which the pistol was loaded. He goes on to relate, that he heard that same evening, about seven o'clock, that Mr. Horsfall had been shot; that he heard it in Wood's shop, where Mellor works, and the woman who brought the account in was Dame Hartley; that that same night, as they were going to bed, Mellor told him that he and Thorpe had called at his (Mellor's) cousin's, Joseph Mellor at Dungeon Bottom, and that they had left there the pistols in some flock. This certainly is a very material fact, when you come to consider the evidence given on that part of the transaction, and compare it. He represents Mellor to have added, that there were two apprentices of Joseph Mellor's there, whom he had told to give the pistols to their master when he came home, and that he and Thorpe had gone through Lockwood to Huddersfield. That I take to be the straight way from Dungeon Bottom, where they parted, to Huddersfield. The other two men had gone, according

to the account of Benjamin Walker, to Honley. Hall says, that Smith, who went the other way with Walker, came home that night, and he likewise slept in the same room with the witness; Smith said they had been at Honley, and that they had hid their pistols in Dungeon Wood as they were going through (Benjamin Walker, you may remember, says they hid them in some ant-hills); and that they had some beer at Honley; that the Sunday after this he saw the prisoner Mellor give Smith a guinea or a pound note; and that it was as much as three weeks after this, before he (Hall) got back the pistol which he had lent to George Mellor, and which, according to their account, had been left at the cousin Joseph Mellor's house, at Dungeon Wood. He says after that George Mellor asked him, one Sunday, to lend his pistol to go to Leeds, saying that there were some people come from Leeds, that wanted some arms; and accordingly he let it go. He gives this further account, that on the Saturday night, two or three days before Mellor was taken up, and when he was expecting to be taken up, he asked this witness if he would have that coat that Thorpe had on, to go before Mr. Radcliffe the magistrate, as he (Hall) was the most like Thorpe; that he asked him to put on Thorpe's coat, that somebody might mistake him for Thorpe; that he was to go to the justice's with that coat on, when he was called on, and say he was the person who had gone with George Mellor to his cousin Joseph Mellor's, and had asked for employ in his work; but he would not do that. On the Sunday after Mr. Horsfall had been shot at, Smith asked him to go with him to seek the pistols that were hid in the ant-hills; they went to Dungeon Wood, and hunted for them among the ant-hills, but did not find them that morning, and they were never found. Two or three weeks after, Smith showed him a pistol, and told him somebody had been with him, and found that of his. He is particularly asked, whether, when Benjamin Walker was taken up for this offence, he had sent for him (William Hall) to be his witness. He says he was sent for, but was not examined on behalf of Walker, but was examined relative to some other subject of shear-breaking, that has nothing to do with this business. That is the evidence of William Hall; whose testimony, though he is not an accomplice, you will consider very attentively, as he is certainly very much tainted.

The next witness is Joseph Sowden, who says, he is a cropper in Wood's shop; that he saw all the three prisoners the day Mr. Horsfall was shot; that at about half past four, or between that and five, he saw Thorpe and Mellor enter the shop, while he was getting some refreshment, with each a pistol in his hand; that was the shop where he and Benj. Walker worked; Mellor worked in another shop. He says, Benj. Walker, William Hall, John Walker, and his son William, and a man of the name of Varley, were there. He says,

he heard George Mellor, the prisoner, order Benjamin Walker to go home, and to fetch top-coats and a pistol; that Benjamin Walker accordingly went out, but he was not there when he returned, as that day he was working in what they call the raising shop; that he did not see Smith that day at all. He says, that one pistol, which they came in with, was Smith's, that the other was brass mounted, with a brass guard, and was three inches longer in the barrel than the other pistol; that he saw no more of any of the prisoners till he heard of Mr. Horsfall's death; that what he heard pass was in Wood's kitchen, after he had got home; he had before that heard of what had happened to Mr. Horsfall. The next morning, he says, the three prisoners and Walker, both jointly and severally, related to him the particulars of their lying in wait for Mr. Horsfall. He did not repeat the particulars, but he said that they all of them had related what had happened, and that the next morning, or the morning after, Thorpe called him out of the shop, and he followed Thorpe into the press shop; that Thorpe said to him, "Sowden, I must have you sworn to keep the murder of Horsfall a secret in all its circumstances." Sowden states, that he said he never took an oath, either legal or illegal, in his life; that he never had had occasion to be examined before a magistrate, and he did not choose to take any oath; upon which, George Mellor swore that he should take it, or he would shoot him dead; that through fear of his life, knowing that he had it in his power to realize his threats, and having reason to believe that he never went without loaded pistols, he submitted, and received the oath, which was administered in the press room; that Thorpe produced the oath out of his pocket, and that the substance of it was, to keep the murder of Mr. Horsfall a secret in all its circumstances, under pain of being followed by the most unceasing vengeance, and finally put out of existence by the first brother he should meet; that there was a Bible at the time produced; that they afterwards, by the same threats, forced him (Sowden) to be the person to administer that oath to all who knew of the murder of Mr. Horsfall, and that he accordingly administered it to Benjamin Walker, John and William Walker, James Varley, William Hall, and Smith, who were all the persons that appear not only concerned in it, but aware of the communications which had been made from one to the other.

He says, upon cross-examination, that when Mellor came in, he ordered Benj. Walker to go home and fetch great coats and pistols; and that he did not himself know at that time what they were going about.

They then produced on the part of the prosecution, John Walker, the father of Benjamin Walker, who had been referred to as a person who was in the shop and heard what was passing, and as having been sworn. They called him up, to ask, whether he was there at the time, in this shop; and in order that the other

side might have an opportunity of putting what questions they pleased to him. However, no questions were put to him. This is the evidence as to what took place on the day on which Mr. Horsfall was shot, on the night when they returned home, and the next day, when, according to the account given by these witnesses, all those persons who knew any thing of the transaction, were bound by this abominable oath (if it was administered) to keep this matter secret.

They then proceed to the other points of the case opened on the part of the prosecution, as circumstances to affect the different prisoners in the parts they took in the transaction after the murder of Mr. Horsfall had been committed. And they first call Martha Mellor, who says that her husband, Joseph Mellor, is the cousin of the prisoner George Mellor; that she and her husband live at Dungeon Wood; and that to come from Mr. Radcliffe's plantation to their house, the nearest way is to come through Dungeon Wood. She says, that she heard of Mr. Horsfall having been fired at, between eight and nine o'clock in the evening on which it happened, by the report of some persons that came in. She states that her family consisted of her husband, herself, one child, four apprentice boys, and a servant girl. She speaks of one of the apprentices having misbehaved, and run away; and two of the apprentices being here. She says that her husband is a cloth-dresser; that on the same evening on which she heard afterwards that Mr. Horsfall had been shot, she saw the prisoner at the bar, George Mellor, about a quarter after six, when he came to her house with another person whom she did not know; that they came first into the workshop, and then from the workshop into the house; that George Mellor asked her, if her husband was within; she said that he was gone to market; he then asked, if they wanted a man to work; upon which she said, no, there was no occasion. They had no work, I suppose, in which they wanted to employ him. He then asked her to lend him a handkerchief; it does not appear for what purpose; and she lent him a black silk handkerchief; and then George Mellor asked her to allow the gentleman who was with him to wash himself, and she accordingly allowed him to wash himself; and she describes George Mellor as having on a dark-coloured coat, but no top-coat on at that time, that is, when he came into the house, he having been in the shop. She says the gentleman who was with him had a dark coloured top-coat on. They stopped there about a quarter of an hour. George Mellor asked her to lend him a coat; she told him her husband's upper coat was in the shop; and accordingly both these men went through the shop, the same way they had come into the house; and they said, if they did not meet her husband, they might probably call again about ten o'clock that night. She says, she thinks it was a quarter



past six o'clock when they came, for she guessed they had been gone about half an hour before her husband came home; and she thinks he came home about seven o'clock. She is asked whether the prisoner, George Mellor, has borne a good character; and she says he has.

Then the whole of this transaction is closed by the account of the apprentices. They had seen these persons come in, for they came into the shop first. Durrance, one of these apprentices, who is about seventeen years old, says, he saw George Mellor at his master's house at Dungeon Bottom this night, when Mr. Horsfall was shot; that he was in the shop when George Mellor came in, and a man with him, who he thinks was like Thorpe; that at that time they had dark-coloured top-coats on, but George Mellor took off his top-coat, and put it on a brushing-stone, and he then had a green coat on; that he asked the apprentice to go up stairs with him, and he went up with him; the other man stayed below; that when they got up stairs, George Mellor gave the apprentice two pistols, that they might be two feet long, that they put these two pistols under some flocks to conceal them, that he himself did not take particular notice of them to know whether they were loaded or not, and that George Mellor told him he had no occasion to say any thing about them: but he says that when his master came home, he (very properly) told his master who had been there, and what they had left there; that he and his fellow apprentice stopped at his work, and George Mellor went down; that he showed the pistols to his fellow apprentices, Kinder and Oldham, and that Kinder told him at the time that it was George Mellor, he himself not knowing him. Now, he says, he thinks that the first prisoner is the man. He says, when his master came home, he told him his brother had been there, and what he had left there; that he showed his master, Joseph Mellor, the pistols, and that his master, Joseph Mellor, and the apprentice, took them from under the flocks, and carried them into the laith, and hid them under some straw in the laith. He says he has himself been before Mr. Radcliffe the magistrate, and that after he had been before Mr. Radcliffe, George Mellor gave him (this apprentice) five shillings, and bid him give the other apprentice, Kinder, half of it, to speak the truth of what they had seen; but he told him to keep the pistols a secret, that is, to speak the truth, but not the whole truth.

On his cross-examination, he says they stayed but a short time; that the time when his master came home was an hour, or an hour and a half, after these men had been at the house.

Then the other apprentice, John Kinder, who saw Mellor come in, and told his fellow-apprentice who he was, is called. He says, that he remembers the night when Mr. Horsfall was shot, that he saw George Mellor come in, and Durrance asked him who that was that came,

and he told him he thought it was George Mellor: that he himself was in the fold, that he met Mellor coming down again after he had been in the shop; that Durrance showed him the two pistols Mellor had left there, that they took them from under the flocks, and he thinks they were not loaded, and that for a very good reason, because he opened the pan and blew through the touch-hole; and he confirms the account of having received from Durrance half a crown, which, Durrance says, George Mellor had given him to speak the truth of what they had seen, but not to say any thing about the pistols.

Joseph Mellor the cousin, who was not at home when they came, is the next witness. He says he was at market on this afternoon, that he got home, as nearly as he can guess, about seven in the evening; that Durrance the apprentice, when he came home, showed him two pistols; that he had, before he got home, heard that Mr. Horsfall had been shot, and when Durrance showed him the pistols, he went with him, and hid them in the laith, because he was afraid of their being found upon his premises. He says the pistols were nearly of a size, but one was of a larger bore than the other, the larger one was brasse-mounted, and he himself had heard George Mellor before say, that he had brought a pistol from Russia. He says this too, which is a material circumstance, that he found a dark-coloured top-coat upon the brushing-stone in his shop, and in the pockets of that there were two ball cartridges, and he found a dark bottle-green coat behind the door, but neither of them belonged to him; that a man of the name of James Varley came the morning after, and he told Varley he had the pistols; and in about a week after, the pistols were gone, but how they got away we do not know; there is no account of who fetched them away. He also says, that he had left a top-coat of his, which was a drab top-coat, at home, and that was gone.

Now, the evidence of these four last witnesses, is evidence, which, as it respects George Mellor in particular, calls very much for some explanation; because on this very night, and at this very time, according to the evidence of one whom you cannot suspect at all of being influenced by any bias against these prisoners, George Mellor and a stranger came to the house of the cousin, and having been before in the shop, asked the wife of the cousin, whether they could give any work to this man who was with him? She said, no. He then asked for the loan of a handkerchief; and it appears by the evidence before you, that one of them had hurt a finger, and one of them had scratched his cheek in going through the wood. It also appears, according to the evidence of the apprentices who saw them come into the house, that each of the two persons who came, had dark-coloured top-coats on; that they took them off; that George Mellor laid his upon the brushing-stone, and there was another dark-coloured top-coat hung behind the door, which Joseph Mellor found when he came home; that both having

top-coats when they came (and dark-coloured top-coats). George Mellor asked his cousin for her husband's coat, and took away a light-coloured drab coat of the husband's, which was hanging up there. That, to be sure, has the appearance very much of a desire of changing clothes, so that the dress in which they had been, and might have been observed, should not tend at all to betray them. But there is another circumstance: the first thing done by George Mellor, and this person, who is not recognised except by one of the apprentices, is, to hide a brace of pistols, which the apprentice is desired to say nothing about, and they are both of them discharged pistols; they are afterwards taken into a place of concealment, because the cousin, Joseph Mellor, thinks it not safe for them to be found on his premises; and they are afterwards fetched away, but nobody is here to tell us who fetched them. Joseph Mellor, when he comes home about an hour after, finds his coat gone, but two dark-coloured top-coats are left, one on the brush-ing-stone and one behind the door; in the pocket of one of which there are two balls. This is left wholly unexplained. This is fixed to be George Mellor, by the wife of the cousin. And if these circumstances were unconnected with this transaction, some account might have been given by evidence, with what transaction they are connected, so as to show that they are to be considered features in some other transaction, and not features applicable to that which is the subject of our present inquiry. That is the end of the evidence, with respect to what took place at Dungeon Bottom.

The only additional evidence is that which is produced by Mr. Staveley, the governor of the gaol. The top-coat taken off Mellor, the prisoner, when he came here, which is acknowledged by Mrs. Mellor to be the same that had been left at her house, and Joseph Mellor says is the same that he found left at his house, when he got home that evening.

The counsel for the prosecution next call witnesses who had nothing to do with this transaction, for the purpose of giving an account of what they saw in the neighbourhood of this plantation. Abraham Willey says, he was a workman for Mr. Radcliffe; that he was at work about two hundred yards from the spot where Mr. Horsfall was shot, that is, in a field which I would describe as behind the plantation, with respect to the situation of the public road along which Mr. Horsfall was travelling; that he heard a gun, but did not see it, being in the stable. He says it came from the nook of the plantation next the road; that upon hearing it or soon after, he went up, and saw four men running down by the end of the building, across the fields between the plantation and Dungeon Wood, and making for Dungeon Wood; that they were not nearer to him than fifty yards, and that all the four men (he agrees in the account given by Parr and others) had dark-coloured coats on at that time; and he says,

that this must have been the time Mr. Horsfall was shot, because in two or three minutes afterwards, his two boys, who are referred to by another of the witnesses as being collecting dung in the road, came and told him what had happened to Mr. Horsfall: So that the point of time is fixed.

Then further as to that part of the case, a person of the name of Hartley was going along the road from Crossland to Lockwood, which runs at the back of the fields, and of Mr. Radcliffe's plantation, and would give him the command of the sight of those fields and of Dungeon Wood. He says, as he was going along that road, he heard the report of a piece, and that when he got to the top of the close of land where he was, he saw four men come out of Mr. Radcliffe's plantation, and jump over the wall that went to Dungeon-wood, and so into Dungeon Wood; that they had all dark-coloured clothes on; that as they were getting over the wall, he observed that one of them had a pistol, with a brass end to it, under his coat, because the coat flew back as he jumped over the wall, and on the man looking back, and, as he supposes, taking notice of him, he pulled his coat over the end of the pistol. That again confirms the account, that the number who did this consisted of four, and that they immediately made off that way.

Mary Robinson, the landlady of the public-house at Honley, to which the prisoner Smith and the accomplice (according to the account of Benjamin Walker) retired after the murder had taken place, says, that her husband keeps a public-house at Honley, on the left-hand, at the bottom of the town; that they heard that Mr. Horsfall was shot on the same evening, by some market people coming in; that on that evening two young men came to their house, and had something to drink; that she recollects a collier being at her house, who had got a little fresh with liquor; and that when the news was brought, soon after these young men came in, that Mr. Horsfall was shot, Smith, one of these two young men, who whistled very well, began to whistle, and pleased the collier, and that he began dancing. She says that the time when the young men came in, was between seven and eight in the evening, and that they went away a little before nine. That tallies nearly with the account Benjamin Walker gives. And she says, that when her husband came in, he asked them where they came from? and they said they came from Longroyd-bridge; which is the place where these two persons lived.

This is the evidence on the part of the prosecution, which consists of the testimony not only of Benjamin Walker, who is, in the strictest sense of the word, an accomplice (going out with them, and continuing with them, though he says, the latter part of the time against his will, being afraid to go back), but of the different other witnesses belonging to the same manufactory, who appear to have been witnesses to preparations going on, and

declarations made after the act had been done, so as to know what had been done, and for a considerable time, at least, never to have disclosed it, though they were not themselves parties in the act itself. There is the confirmatory evidence of those persons who saw the four men, immediately after the report, making off in the direction described by the accomplice, and dressed, as is described by the accomplice, all in dark clothes. And above all, there is the transaction which took place at the house of the cousin of George Mellor, where the two dark top-coats, and the pistols not loaded, were left, under the circumstances which the witnesses have detailed to you; and likewise what took place at the public-house where Walker and Smith went, according to Walker's account.

On the part of the prisoners, they have called witnesses to show that this account is not true, for that some or all of the prisoners were seen by different witnesses at places and times, where they could not have been, if they had been concerned in this transaction. You see, no proofs are given to explain any of those strong passages of the evidence, which I observed upon to you as I went over it, and those in part from persons connected with one of the prisoners; but witnesses are produced to show that one or other of the prisoners, and all of them in some instances, were seen at such a time in the evening, that they could not have been at this plantation when the piece was fired off, by which Mr. Horsfall was shot. This must depend very much, not only on the credit given to those different witnesses who have been called, but certainly, at this distance of time, upon the accuracy of their recollection; and some of them, you will see clearly, according to the account given by the other witnesses, must be mainly mistaken as to time.

The first witness called, is William Hansard, who says he was at Huddersfield (where he lives) on the 28th of April last, the day on which Mr. Horsfall was shot; that he knows the prisoner George Mellor, to whom he particularly speaks; that he saw him about a quarter of a mile out of the town of Huddersfield at a little before seven o'clock in the evening; that he had heard of Mr. Horsfall's being shot, and that Mellor was passing as if going to Longroyd-bridge. I do not know whether that is consistent with the date at which the firing appears clearly to have happened. It must have happened some short time after six o'clock, according to the account of the first witness, Armitage. As nearly as he can recollect, it was a quarter before six when Mr. Horsfall stopped at his door, and he fixes the utmost time he stayed at twenty minutes, which would bring it to a quarter after six, and he had a very little way to go to the plantation before the shot was fired; so that it would probably be between a quarter after six and half past six, when the shot took place. This witness fixes it a little before seven, when he saw Mellor on the road, as if

going to Longroyd-bridge. That comes very nearly to the time he was at Joseph Mellor's. The woman says he was there at a quarter after six o'clock; but clocks vary, and the memory of people varies as to time; and therefore one cannot try very correctly by that test, unless one has something more than the mere recollection of persons. However, he says that a little before seven he met George Mellor upon the road, going to Longroyd-bridge.

Jonathan Womersley, a clock-maker at Huddersfield, says that he saw George Mellor on the evening on which Mr. Horsfall was shot, about six o'clock, or a quarter or ten minutes after, at the corner of the Cloth-hall-street, in Huddersfield; that they went to Mr. Taverner's, to settle a little account, where they had one pint, and then a second; he stopped till he got his money, and then he left Mellor there, and then he went to the Brown Cow in the market-place, and the soldiers were then riding over the market-place, full speed. I suppose, upon the alarm of this person having been shot, the soldiers had been ordered out; that has not been proved, but I suppose that is what is to be understood. He says that he saw him about six, or a little after that time. According to the account of his cousin, he was at Dungeon Bottom at a quarter after six. They may all think that they speak accurately, but still it shows the little reliance which can be placed upon evidence as to particular times, when you come to be bringing several transactions within the space of pretty nearly an hour. Mrs. Mellor says that they stopped a quarter of an hour; so that according to her account, Mellor did not leave her house till half after six.

The next witness is William Battensley, a shoemaker, who was at Huddersfield and at Taverner's at the time the other man speaks to; he confirms his account, that they had two pints of beer, and that they remained in company till they had drunk it, and he thinks they stayed half an hour at Taverner's, it might be more or less. That does not carry it further as to time, only that he was there with Womersley. The only question is, whether it was sooner or later.

John Thorpe says, he lives at Castle Gate in Huddersfield; that he knows George Mellor; that he remembers the day Mr. Horsfall was shot, that he met George Mellor opposite the George Inn in Huddersfield, about ten minutes before six o'clock (that is carrying it, you see very early); that he stopped in the street with him a few minutes; he says he knows he wanted ten minutes of six, for that he had a watch he wanted to sell him, and he asked him if he would buy it; that he took the watch out, and that that makes him know it was ten minutes before six o'clock. That is not reconcilable at all with the account given by the cousin, but by supposing that the clocks or watches vary very much, or that the memories of the people vary very much.

Jonathan Batteraley, a shoemaker at Huddersfield, says, he saw Mr. Horsfall on the evening when he was shot; that he went up the street towards the Market-place, a little after five o'clock; that he (the witness) then went into his own house, that he drank tea, and then he put on his coat, and went up the street about a quarter of an hour after Mr. Horsfall had got on horseback (that would be about half after five o'clock); that he went across the Market-place leading to New-street, where he met George Mellor, coming towards the George Inn; that they passed a few words, and were not above a minute or two together at the farthest; that he went home; that it was not quite six o'clock, when he left George Mellor, and he did not hear of Mr. Horsfall's being shot till after he had got home. Still these all fix him to have been in Huddersfield at a time not at all consistent with the account given by Mrs. Mellor of his being at Dungeon Wood.

George Armitage, who is a blacksmith at Lockwood, says, that his shop is between Joseph Mellor's house and the town of Huddersfield; that he was in his shop between five and six, and that he saw George Mellor come past, but he cannot say within a few minutes as to time; that he had not been at his drinking that evening, that they generally drank between five and half after five, but that he had been shoeing a horse, and perhaps it might delay him; that when he saw George Mellor pass, he was coming as if from Joseph Mellor's, and going towards Huddersfield. Now between this man and Joseph Mellor's wife, there must be a mistake; because she says, according to her account, he did not leave her house till half after six, and this man says he came past his shop between five and six. He says he has known George Mellor some time, and that he never heard any thing against his character; that the account he gave was, that he had been at Joseph Mellor's, with a man that wanted work. To be sure, either Joseph Mellor's wife, or this man, must have erred very much in the time. They were not aware, perhaps, of each other's evidence.

Joseph Armitage, a brother of the last witness, says, that he saw George Mellor, on the day on which Mr. Horsfall was shot, at the shop-door of his brother; that his mother came to call them in to their drinking, and that he went to the door, and saw his brother talking with George Mellor. He does not fix the time, only that it was after his mother had called them in.

The next witness speaks particularly with respect to the prisoner Thorpe. Charles Ratcliffe states, that he is a cloth-dresser at Huddersfield; that he remembers the night Mr. Horsfall was shot at; that he was at Mr. Fisher's, at Longroyd Bridge; that he went there at half past five o'clock that evening; that he went into a room at Mr. Fisher's, called the raising-shop, and that he saw Thorpe there wearing a blue coat cloth, that he had a con-

versation with him for a quarter of an hour, and left him there when he came away; that there was a young woman fetching water out of the cistern in the shop in a can; that he returned to Huddersfield immediately, and that when he got there, it was about a quarter or twenty minutes after six by the Cloth Hall clock; and that half an hour after that he heard of Mr. Horsfall being shot. So that, according to his account, he saw Thorpe in the raising-shop at half past five o'clock that evening, and he stayed there nearly a quarter of an hour, which would bring it to nearly a quarter before six, with the variation of clocks. I apprehend a very little time would be necessary to go from Longroyd Bridge to the plantation. Still, if they are accurate in speaking, by the same clocks, the account appears inconsistent; but, accounting for the difference by the difference in clocks and memories, I do not think it is so very striking. Ratcliffe states, that Thorpe was the only man at that time who was at work in the shop.

Frances Midwood, a young woman living with her father at Longroyd Bridge, states, that she recollects the 28th of April; that they were to wash the next day, and she was fetching water from the raising-shop of Mr. Fisher, for washing the next day; that she began going about five o'clock, that the first time she went there was nobody there; that when she went about ten minutes after five, William Thorpe was there, and again the third time William Thorpe was there, talking with another man, but she did not know who he was; that she went repeatedly, and continued going until she heard some report about Mr. Horsfall being shot; and that then she did not fetch any more water, but that every time she went to the raising-shop, after the first, she saw Thorpe there; and that one of the times when she was there she saw Abraham Pilling, who had been making her a pair of shoes, and had followed her to the shop, which he saw her go into.

Then Abraham Pilling is called, who is a shoemaker in Huddersfield. He says, that he had made a pair of shoes for the last witness, Frances Midwood; that he delivered a pair of shoes to her on the night Mr. Horsfall was shot; that he was going to her father's with them, and saw her crossing the road with a can, that he followed her into the raising-house, where he found her and William Thorpe; that she was lading water out of a cistern with a can; that it wanted a quarter to six when he set out from home, and Longroyd Bridge is better than a mile from his house. So, that, according to his account, it must have been past six o'clock probably before he got there. He says that Fanny Midwood took the shoes, and asked him what was to pay, and she went to fetch money to pay him; and in the mean time he talked with Thorpe, and then she came back with a note. He stayed a little while longer, and then he went forward a mile another way, where he was going; and that as he was going out of the raising-house, the

and from thence, on Friday next, to the place of execution; that you may be there severally hanged by the neck until you are dead, and your bodies afterwards delivered to the surgeons to be dissected and anatomised, according to the directions of the statute. And may God have mercy upon your souls.

*Thursday, 7th January, 1813.*

THE KING

*against*

JOHN SCHOFIELD.

*For maliciously shooting at John Hinchliffe.*

The indictment contained four counts; the two first framed on the Stat. 9. Geo. 1st c. 22. and the two last on the Stat. 43. Geo. 3rd c. 58. The first count charged, that the prisoner and a person unknown fired at Hinchliffe. The second count charged, that the person unknown fired at Hinchliffe, and that the prisoner was present aiding and abetting. The third count charged, that the person unknown fired at Hinchliffe with intent to murder him, and that the prisoner was present, counselling, aiding and abetting, and privy to the firing. The fourth count only differed from the third, in stating the intent to be to do some grievous bodily harm to Hinchliffe.

The prisoner having pleaded not guilty to this indictment, it was opened by Mr. Richardson.

Mr. Park.—May it please your lordships; gentlemen of the jury, The prisoner at the bar stands indicted before you, upon two different acts of parliament: one (which is commonly called the Black act) passed in the reign of his majesty king George the 1st, and the other in the present king's reign, in the year 1803. Probably this case will resolve itself more into the latter statute than the first.

Before I state the circumstances of this case, I will shortly state to you the law upon which the prisoner stands indicted; and the frame of the act seems almost to have had in view, by the preamble of the statute, the disturbances which have taken place in this county lately. For the act says—"Whereas divers cruel and barbarous outrages have been of late wickedly and wantonly committed in divers parts of England and Ireland, upon the persons of divers of his majesty's subjects, either with intent to murder, rob, or to maim, disfigure or disable, or to do other grievous bodily harm to such subjects, be it enacted" (the words upon which the present indictment is framed)—"That if any person shall wilfully, maliciously and unlawfully, shoot at any of his majesty's subjects, or shall wilfully, maliciously and unlawfully present, point, or level, any kind of loaded fire-arms at any of his majesty's subjects, and attempt, by drawing a trigger, or in any other manner to discharge the same at or against his or their person or persons," and then it goes on to state

other crimes, with which I need not trouble you, "then and in every such case, the person or persons so offending, their counsellors, aiders, and abettors, knowing of, and privy to such offence, shall be and are hereby declared to be felons, and shall suffer death as in cases of felony without benefit of clergy." This is the law upon which the prisoner stands indicted; and I need hardly state to you (because the point has been frequently stated during the present session) that the question is not so much, whether the prisoner at the bar himself, by his own hand, fired at this individual, John Hinchliffe, as, whether he and the person who did actually fire at John Hinchliffe, went thither with the unlawful purpose to do some bodily harm to him. For there are two counts in this indictment; one stating, that he went with intent to murder; and the other, that he went with intent to do some bodily harm.

There are in these cases two main questions for the consideration of the jury; first, whether the crime itself that is charged has been committed by any one; and if it be established that it has been committed by some one, then whether the person now charged before you has been guilty of that crime?

Of John Hinchliffe being wounded, there will remain no doubt. He is a person of respectable and decent situation in life, residing in Holmsfirth in this county; besides being the parish clerk, he is a professional singer, teaching to the country people that art, and among the rest, he had the prisoner at the bar for his scholar. The prisoner had been learning for a considerable time, so that Hinchliffe was well acquainted with him. In the night of the 22nd of July, the prosecutor being in bed, was called to by a voice without his house, and desired to come out of the house. He will swear, that he immediately knew the voice to be the voice of the prisoner. He had had a very good mean of knowing his voice, and it is hardly necessary you should see the person who speaks to you, for you will equally know him by his voice, if you are acquainted with it. He was some time, being in the dead of night, before he would come out; however at last he came out. I am not sure whether he slept on the ground floor or not. As soon as he opened his door, he was immediately seized by two men armed with pistols, and dragged some considerable way from his house. There were two persons, neighbours of his, one of the name of Thomas Hinchliffe (no relation of his), and another of the name of Jonas Moody, living in another house, still nearer to him. When he had been dragged out of his house, it happened most providentially (for I have from the statement made to me, very little doubt that this person had a more evil intent than was afterwards accomplished) a horse without any rider trotted up, and alarmed these two men. They thought of course that somebody was upon it, and were immediately alarmed; upon which Hinchliffe, the prosecutor, escaped

from them, and ran towards the house of his neighbour, Thomas Hinchliffe. Immediately on his doing so, the other man, who is not found, and whose name and person we know nothing about, presented his piece and fired it off; and Hinchliffe has entirely lost his eye. He screamed out and the two men fled. Thomas Hinchliffe got up; and the prosecutor having called out, that his eye was bruised to pieces, which it was, he was taken first into the house of Thomas Hinchliffe, and then into his own. This is the fact which has been committed: of that there can be no doubt, for the man will be examined before you.

The next question is, how is this brought home to Schofield the prisoner? On that subject, I will minutely detail the evidence by which we propose to bring it home to him. In the case of all crimes of this sort, it is desirable, if it can be done, to find out a motive for the act. You will naturally inquire what motive there can be in this case. Here is a man living (as it should appear) on terms of intimacy with him, and why should he commit this outrage? for there is no attempt to rob his house nor his person; indeed he had no clothes upon him. I am afraid there will be a motive most apparent. This young man had joined a party of (what are called in that part of the country) Luddites. Some time previous to this offence, I believe so long before as the month of May, this young man met John Hinchliffe, and talked to him a considerable time. They walked together, and Schofield inquired of Hinchliffe, whether he would join the Luddites, and told him that he himself was enrolled in the society of Lads. He took a paper from his bosom, and read it to him, which contained words which he does not exactly recollect, but he will tell you they were to this effect: "In the name of God Almighty," and then, that "any brothers who informed of each other, were to be punished;" with a variety of words of that description, importing an engagement of secrecy. Schofield went on to tell him, that the kingdom was to rise; that they had got over a whole regiment, and a vast variety of particulars, which I shall not go into further. Hinchliffe immediately said very properly, "I will have nothing to do with it," and he was so uneasy about this, that he thought it his duty some time afterwards to communicate what had passed to two or three respectable persons in his parish. Whether they breasted this abroad, or not I do not know, but on the day or day out one before this offence happened, John Hinchliffe was called out of his bed at six in the morning, by the prisoner at the bar, who wished him to take a walk in the fields with him, which he did; and the prisoner said, "Have not you disclosed to Blythe, the constable, what passed between us on such a day?" He said, "I have not to Blythe, but I have to A. B. and C." The prisoner said, "I do not know how I am to get over this: I could get rid of every thing but the oath;"

and as he went on, complaining. Gentlemen, when the outrage itself was committed, it will be proved to you that the man who fired the pistol, said to Hinchliffe, "What have you been doing?" Hinchliffe answered, "I have done nothing of which I am ashamed." "Yes," said the other, "you have been declaring something about John Schofield."

Still it will be asked, how do you prove John Schofield was one of the party at this house? It will be proved to you by Hinchliffe, that he was perfectly acquainted with the voice that called upon him to come out; and that he knew the voice, at the time to be the voice of Schofield. This man had something over his face, which appeared to be a light coloured handkerchief: and, some accident blowing the handkerchief aside, Hinchliffe immediately knew the man to be the prisoner, and he will swear to you that he has no doubt of that fact.

The prisoner at the bar is a married man, and has a child; he lived with his father, who is also, I believe, a married man. He was a workman with his father, both as a farmer, and in his other business, whatever that was. The very morning after this outrage was committed, the prisoner set out from this county to London, leaving his wife and child behind; he fled, taking a very small quantity of clothes with him, as you will find proved. There was immediately a reward offered for his apprehension; he was described, and his dress described. The witness who will be called, will describe the kind of pantaloons, or long breeches, he had on at the time of the fact; that they were lead-coloured breeches. Immediately upon his person being described, and his name given, an officer of the police at the Whitechapel Office in London, who will be called before you as a witness, went on board a ship destined for America, and found the prisoner. And it is due to the prisoner to say (for I will state every thing for him, that I know of; as well as against him) that he had not gone on board the ship under a false name. He was immediately asked, whether he came from Yorkshire, and he said, he did. He was asked whether he knew a person of the name of John Hinchliffe, of Upper Thong; and he said, he had never heard of such a man in his life. He was asked to read the advertisement. He said, he had never heard that such a person had been shot at, before he left Yorkshire; though it will appear in evidence that he left Yorkshire the morning after. He said, I have no doubt I am the person here described, for this is my description; upon which the officer said, "I must take you before sir Daniel Williams," one of the police magistrates in London.

After this, on a request from the magistrates in Yorkshire in consequence of a description of the handkerchief with which Schofield's face was disguised, the police officer went on board the ship again, and opened his trunk, the key of which the prisoner gave him; and in that trunk the very handkerchief was found. He

had on a pair of lead-coloured pantaloons at the time of his apprehension; they did not appear to be very new; but he was asked, where he got them; and he said he had bought them since he came to London, at a shop; he was naturally asked, where that shop was; his answer was, "O, I do not know the name of the people, but I could show it with the greatest ease, it is near the London Docks." The officer afterwards solicited him to point out the shop, and he could point out no such shop; and the officer went to three or four shops, but could not find that any such article had been sold to any one. And there is a decisive fact, with respect to these pantaloons; if he had bought new pantaloons in London, the old ones with which he left the country, would probably have been in his possession; but there were none such.

The prisoner was examined before the police magistrate in London, which becomes material, lest there should be any idea of fallacy in the memory of the witness, as to his not knowing John Hinchliffe of Upper Thong. In this examination, John Schofield says, "I come from Nether Thong, in Yorkshire;" and so on. "I am a farmer; I worked with my wife's father, Samuel Jagger, who has a farm at Nether Thong, which place I left a fortnight since to-morrow." In another part, he says, "I set off from Nether Thong on Thursday morning, the 23rd of July." The deed was done on the 22nd. "I do not know any such person as John Hinchliffe of Upper Thong. I did not hear that he had been shot at, before I left the country." Now if he did not know such a person as John Hinchliffe of Upper Thong, it was right he should say so; but if he did know him, and had done no injury to him, what motive could there be for his concealing the fact? and when he came into Yorkshire, you will find he admitted the fact. Before the magistrate in London, who knew nothing of him, and who he thought would never find out the truth of the fact, he denied it; but being examined afterwards in Yorkshire, where the facts were better known, he said, "I am well acquainted with John Hinchliffe, of Wickens, in Upper Thong; I have been with him many hundred times singing; he taught me to sing." So that here is a direct contradiction between the one examination and the other; and I read them to you, for the purpose of showing that contradiction. The first examination was taken before sir Daniel Williams, so early as the 5th of August 1812, the act having been committed on the 22nd of July; and the second examination taken of course when he was brought into the county of York. These are the corroborating circumstances of the case.

I am told, gentlemen, and I mention every thing that I am aware can be stated (because it is right to the prisoner, as well as to the public, that it should be stated), I am told, it is to be said, that John Hinchliffe of Upper Thong did not always tell the same story; when he was first examined about it he did not mention this

man. I dare say that is true, but he could not have been long in mentioning him, for he was apprehended on the 5th of August, in London. But it is extremely probable, such was the danger and apprehension of every body in this county at the time, particularly people living in that part of the county, and unprotected as this poor man seems to be, that these people should be afraid of speaking out, till they found they were under the protection of the government, or the military. But you are to judge, as in all cases you must, as to his degree of credit, in the circumstances under which he made the concealment. I am also told, we are to have an attempt in this case to establish an alibi; that is, that the prisoner was in another situation at the time of the fact being committed. I believe none of you sat in that place yesterday, when every thing upon that subject was most accurately stated: but you know, gentlemen, that the thing depends very much upon the accuracy of the prosecutor's memory. You will remember, when these facts were committed, that this man was waked out of the dead of sleep, and did not know the time; and if it stood upon that only, the man might be mistaken as to half an hour, or an hour. I believe it will turn out, that in the evidence of the witnesses for the prosecution in this case, the account of one as to time will materially differ from the account of the other; and yet there was but one time at which it was committed. That the fact was committed, there will be no doubt, no man will dispute that fact, but the time, I believe, will be stated differently; but does not the clock of one neighbour differ from the clock of another? and is it to be expected, that the clocks of all persons in this situation of life should agree? You will attend to the evidence of the persons called to prove this alibi, and will consider whether they may not be mistaken; and when you find differences of a quarter of an hour or half an hour, it is impossible that such evidence alone can afford a good defence. All these are circumstances for your consideration. I only draw your attention to them, because, by the proceedings in this case, it is not open to me, nor is there a necessity, for my addressing you farther. These I understand to be the grounds of the defence. I shall call my witnesses, and prove the facts I have opened; and if I prove them satisfactorily to your minds, it will be your duty to find the prisoner at the bar guilty of the charge imputed to him by this indictment.

The first witness called was the prosecutor, John Hinchliffe; who proved the previous conversations with the prisoner in May, and on the 20th of July, as stated by Mr. Park; and that, on the night of the 22nd of July he was called out of bed, and on opening his door, was seized by two men, both armed with pistols; who dragged him out of the fold before his house, saying at the same time, that they would not hurt him, but wanted him to show them the

way some where; that, being alarmed by the passing of a stray horse, one of the two men (whom he swore to be the prisoner) ran away; that the man who remained, asked the prosecutor, what he had been doing; to which the prosecutor answered, that he had done nothing amiss to any man; that the assailant said, he was a liar, and had fetched a warrant against John Schofield; that the prosecutor replied, he never had, and had never been before a magistrate in all his life on that business or any other; that the stranger then whistled; upon which the prosecutor ran towards Thomas Hinchliffe's house, and the stranger fired and wounded the prosecutor; and that this conversation was the whole which passed, between the running away of Schofield, and the shot being fired.

As soon as John Hinchliffe had concluded his evidence, it being understood that this was the whole proof going to the gist of the crime, the prisoner's counsel took objections to the indictment.

Mr. *Hullock*.—I submit to your lordships, that the facts given in evidence do not support the indictment, upon either of the statutes. I understood in the opening, that circumstances to show a malicious motive were intended to be given in evidence; but no such circumstances have been given in evidence at all. There is no facts before your lordships, to prove that, antecedently to the man firing the pistol, any malice or ill will, or any sentiment of that description, had existed in the mind of the prisoner at the bar towards the prosecutor; and the very last words, except stating that they wanted to inquire the residence of a man, were, from one or other of the two men (he does not know from which), that they would do him no harm. I submit, there is no evidence here of that mind, which must constitute an offence in this individual. Perhaps it may be contended, that although this man was not corporally present, yet in legal intendment he might be considered as legally present. But I submit, there ought to be previous evidence of malice, in order to warrant the conclusion drawn by this indictment. There is not one particle of proof yet given, and I apprehend none can be given, that this individual either had threatened or intended any harm of any description, before this time. The only circumstance, from which any inference can be drawn, is, that these two individuals had pistols; and my learned friend having alluded to the situation and state of that part of the country, I may do the same. It is too melancholy a truth, that at that period the whole of that country, almost, was armed with that species of weapon. But, because this man was called-up under these circumstances, I submit, in an indictment for a capital felony, it is too much to state, that there is any evidence to go to the jury to sustain this indictment.

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Mr. *Williams*.—I trust your lordships will excuse my following my learned friend, Mr. Hullock; and it shall be precisely upon that point he has submitted to your lordships; that is to say, whether the charge, as laid, is made out at all; and not whether there is any evidence for the jury to comment upon. And, my lords, I apprehend that there can be no argument raised against us from the language of the Black act, as stronger, or as more powerful, than the language of the latter act: but that upon each, this case must resolve itself simply into this; whether or not this man was, at the time, in point of law, a principal felon, or an accessory in the first degree, aiding and abetting at the fact? That certainly is the question; because these large and general words, counselling, aiding and abetting, are mere formal descriptions of the intent and meaning of law; they are the legal periphrasis for the shorter phrase, accessory to the fact in the first degree. And I apprehend, that it makes not a tittle of difference, whether these words are there or not; for I could not contend before your lordships, that, supposing there is a new felony created, all the incidents of felony would not follow; and therefore I apprehend, that these words being there, do in no degree make the case weaker or stronger; and consequently, that the same rule applies to both statutes.

Now, my lords, what is the rule in these cases? I apprehend, that the rule is plainly this; that if the party does not himself do the act, in order for him to be bound, the act of his fellow must be done in prosecution of the original design in which they set out. I presume that my learned friend, who is of counsel for the crown, assents to me in that point. If he does not, I shall be glad to hear in what it is that he disagrees with that proposition. I apprehend that that is the rule; and it is with a view to that rule, that we are to inquire, precisely, whether there is evidence in this case. I shall not waste your lordships time upon that point. My learned friend, Mr. Hullock, has drawn your attention to the fact; and I will take leave very shortly to remind your lordships of some cases which have been decided, with a view to illustrate what the law is.

My lords, I recollect in Mr. Sergeant Hawkins's treatise upon the pleas of the crown, he lays down this (and I mention it, not as a case in point, but as illustrating my principle) upon the subject of unlawful assemblies: he puts the case of a large assembly of persons, who as to numbers, and as to the quality of their meeting in general, would, in point of law, clearly be rioters, supposing they had no intent to explain away that illegal purpose. I mean a meeting of persons at a fair; a meeting of persons at a market; a meeting in any other way, where the number of persons would be sufficient to constitute a riot, unless there was some other meaning. I will suppose an election, which is a case somewhat stronger, and where there is a degree of latitude allowed which



there is in no other. What does Mr. Sergeant Hawkins say upon that? Supposing two men fall out or fight, or three, or four, that does not constitute any riot. Why not? Because it is a distinct act, collateral to and independent of the original purpose; because the other persons are not to be fixed with an act, which is by the by, which is collateral, which does not spring out of the original design, but is a simple and individual act of the party who himself is guilty of it, and who is therefore the only person answerable for it; but he does not contaminate or affect any person by-standing. Let me, with great humility, apply this doctrine. What does my learned friend say is the purpose in this case? I leave that to him. I will suppose that it was some felonious purpose; that is of course, or the indictment could not be sustained. He has stated it to be to shoot. My learned friend, Mr. Hullock, has already commented upon the fact. I will only remind your lordships, with a view to apply what I have taken leave, with great humility, to state, that in point of fact the party had actually gone away, was clearly removed from the spot. The person supposed to be the prisoner being removed, and an altercation actually arising between the other man who was left, and who committed the deed, and the prosecutor, that other man after that time, and not until the man now before your lordships (if it was he) was withdrawn from the spot, independently, individually, of his own malice and wantonness, fired the shot. This man being in no shape or way present, countenancing or directing the other to do the act, but being too far removed to do any thing of that description; then, in point of fact,—is the evil act done, which is the subject of the prosecution?

With great deference to your lordships, I will put one other case; and having done that, I will trespass no further upon your lordships' time. In Mr. East's book, there is a case of some persons going to rob an orchard, four or five I think were concerned in the case. One of the party, without that purpose, independently of that purpose, for no reason connected with that purpose, or necessary for the prosecution of it (and, my lords, I keep distinctly within the rule which I take to be the question here, whether the thing was done in the prosecution of an original plan), fired a shot at a person and killed him. It was held individual murder. Why? Because he did the act of his own will, it being unnecessary for the prosecution of the general purpose which the five had in view, and therefore he answered individually, and the four were held blameless. That is the way in which I, with great deference, and upon very general recollection (for I have not had an opportunity of looking at the cases), do with great humility submit to your lordships, that the act of the man who fired the shot was his individual act, after the purpose (whatever it was) for which the two were united, was at an end.

Mr. Brougham.—After the full and able

way in which my learned friend has argued this question, it only remains for me in one single sentence to remind your lordships of the point. The *corpus delicti* cannot be varied by the evidence to be given, but all which is to be done, is more fully to identify the prisoner. The question therefore is, whether (admitting, for the sake of argument, the person who went away before the act committed, to be the prisoner) any thing is proved, sufficient to authorize your lordships to let it go to the jury, he not having been present at the time, and not having assisted in the act? whether any evidence, now given, is sufficient, of his having come thither with an intent, which intent may appear from the facts to have given rise to that act, not committed by him who was absent, but by the person who remained? We submit to your lordships, that the facts do not merely not prove that, but that they negative it as far as they go. The facts are, that this person (whom, for argument sake, we take to have been the prisoner) came with an unknown person; that being there, they entered into a conversation with the prosecutor; that in the course of that conversation the prosecutor expressed some alarm, which was quieted by some expressions by one or both of them, and that he then acceded to the lawful request of going out to show them the way to some person's house; that when they were so going, a noise happened, that induced the one person to go away; and that after a certain interval had elapsed, the other person did some unlawful act; and we submit, there is no evidence fixing the person who had gone away, with an intent to do that unlawful act.

Mr. Baron Thompson.—The counsel for the prisoner have done their duty, in endeavouring to raise any objections which they could on his behalf. But as far as those objections meet my understanding, I think there is no foundation for them.

It has been suggested, first, that in order to bring this offence within either of the acts of parliament, it is necessary to show some previous malice—to show that this was a malicious act. Certainly no such evidence is requisite in any of these cases, because the act itself sufficiently imports malice, unless an explanation of that act can be given; and it is no more than in the case of murder, which necessarily implies the act to be maliciously done. No prepossession malice is necessary to be proved; in many cases it cannot; but *res ipsa loquitur*. And so it is here. Supposing the prisoner to be the person (and it has been admitted, for the sake of the argument, that he was the companion of the man who fired), the question is then, whether there are circumstances here involving him in that guilt which it is clearly admitted attaches upon the other? It is stated that there are none such. That ought to be left to the jury for their consideration. Now

see what the evidence has been, as far as it has at present gone. The other man, and the prisoner at the bar (taking him to be the man) go together, at the dead of night, armed with pistols, to the house of the prosecutor, who is in bed; they knock at his door and call him up, asking if he lives there: and when he comes to the door, and asks them what they want, they tell him that they want him to show them their way to a man (a very idle account of their errand, not saying what man they wanted him to show them the way to); but they proceed farther, and actually lay hold of him by each arm, and he is in that way brought out of his house. They tell him, indeed, that they do not mean to do him any harm; but what they said is certainly no evidence of their not having any such intention. The prisoner at the bar stays there during the time that I have related: a noise is discovered of the trotting of a horse, upon which the prisoner (hearing it I suppose, for the prosecutor heard it) runs away. As soon as he is gone, a conversation takes place between the other man and the prosecutor, and which conversation is applicable entirely to the prisoner; it is a very short one; there is no altercation at all, no quarrel arising at that time between the prosecutor and the other man after the prisoner is gone; but there are a very few questions, which shew decisively the purpose for which that man at least had come; and it will be for the jury to say, whether the prisoner had not accompanied him for the same purpose, and from the same motives. For as soon as he was gone, the man left asked the prosecutor what he had been doing, and this all with relation to the prisoner; he said he had been doing nothing amiss; that man immediately replied, that he had been fetching a warrant against John Schofield; and it is in evidence, that Schofield himself, only I think two days before this, was apprehensive (for that appears from the conversation that he had with the prosecutor) that a legal information had been laid against him; he inquires about it, and is very anxious to know whether the prosecutor had related to the constable and to other persons, the conversation that had passed between him (Schofield) and the prosecutor, relative to Luddism, and that he had been anxious to swear the prosecutor into that strange and wicked fraternity. He was then afraid, as appears from the evidence of the prosecutor, that such an information had been laid, and indeed the prosecutor told him he had related that conversation, not to Blythe the constable, but to other persons whom he named. The prisoner, Schofield, expressed his apprehensions, that he consequence of that he should be sent to York, for that Blythe had threatened to get him sent there. Now, after the prisoner, Schofield, had run away, having accompanied this other man to the prosecutor's, and assisted in laying hold of him by the arm, nothing more passed between the prosecutor and the other man, than what I have now related,

namely, the inquiry whether he had not given information against Schofield, and the telling him he was a liar when he said that he had not, before the other man immediately set up a whistle, the prosecutor ran off, and as he ran that other man shot him.

Surely, here are facts, and facts enough to be left to the jury in my opinion, that what that other man did was in consequence of their concert and agreement to come together to this place to do this act. They come at the dead of night armed with pistols, they enter into conversation with the prosecutor, they endeavour to get him out of his house, the one taking him on the one side, and the other on the other; and it will be for the jury to say, whether the reason assigned of his showing them some person, whom they did not name, was not an idle pretence for getting him out to use one of these pistols: and one was used, which happily had not the effect of depriving him of his life, but deprived him of his eyesight.

In the view I have of this case, and consistently with all the circumstances, there is enough to go to the jury; that they both went together for this purpose, and that this act was in consequence of previous concert on the part of both; and if the prisoner left the other man only in consequence of his taking alarm on the horse trotting up, it appears to me he must be considered as aiding and abetting, if the jury shall be of opinion that they did their endeavour to get the man out of the house, for the purpose of using the pistols. It appears to me there is enough in this case, as it now stands, to be left to the jury for their consideration.

Mr. Justice *Le Blanc*.—The manner in which, and the stage at which, this objection is brought before the Court, calls upon them to decide, in some degree, upon a supposition as to what the opinion of the jury may be upon the facts. With respect to the legal authorities which have been stated by the counsel on the part of the prisoner, I agree with them; but it is in the application of those legal authorities to the present case, that I think they are not correct. In the present stage of the proceeding, the question is, whether, supposing all the facts that have already come out to be true, and supposing that which hereafter is urged on the part of the prosecution to be made out, if it shall be made out that the prisoner was with that unknown person; whether, in any light in which the jury, consistently with their duty, may view the case, the prisoner can be said to fall within the meaning of the statutes under which he is indicted?

I do not think, in point of law, there is much difference between the one statute and the other; but, taking it upon the last statute, the 43rd of the king, which is more express in stating that the parties shall maliciously fire, with intent to kill or so wound, and that per-

sons aiding and abetting, privy to the design, shall be equally culpable with the man who executes it; it will be brought to two questions. The first will be, whether these two persons came with an innocent design or not; and what their design was, must be collected, not merely from the expressions they used, but from the time at which they came, from the manner in which they were armed, from the language which had been used by the one of them to this party a few days before, and the conversation which appears afterwards to have been followed up by the man who actually fired, shortly after the other had run away; whether, from these circumstances, the jury shall infer that this man, at that time of night, came upon an innocent purpose of merely asking the way to a man's house, whom he did not name, or whether the two came for the purpose of doing this prosecutor some bodily injury. If the jury shall be satisfied that their purpose was purely inquisitive, without any illegal intent, the verdict may be one way; but if they shall be of opinion that they came for the purpose of injuring a man, who had made a discovery dangerous to one of them, then it will become a question, whether the man, who had run off in consequence of the alarm of a horse coming, can be said to be present, aiding and abetting? Taking it to be satisfactorily proved, to the minds of those who are ultimately to judge of it, that their purpose in coming was to do mischief, it is not by one of the parties running away at the instant of the act, and before the piece is fired, that he can extricate himself from the consequence of his companion's act. With respect to the intent with which it is done, in none of these cases is an express wicked intent, or malice, necessary to be proved; the intent follows from the act itself, and if the necessary consequence of the act done, namely, the necessary consequence of firing a pistol at a man, is, that if it hits him, it shall wound him, or do him a bodily injury, the man who fires it at him, of course does it with intent to do him some bodily injury. It appears to me, therefore, that we should not be justified in stopping the case in the present stage, but that the proper course will be, to let it go to the jury, who must ultimately decide it. What the other facts may be, or what the result may be, it is not for me to intimate in the least degree.

The rest of the evidence for the prosecution having been received, and the prisoner having called witnesses to prove that he was at home at the time when the shot was fired, the whole was summed up by

Mr. Baron *Thompson*.—Gentlemen of the Jury:—This indictment charges the prisoner at the bar with having been guilty of a capital felony. The indictment is framed upon two acts of parliament, made in the same matter, and which acts of parliament are levelled against the offence of any person shooting at another. An early act in the reign of king George the First, had made it a capital offence

for any person to shoot at another. The construction upon that act always has been, that the shooting, to bring it within the offence against which the act was made, must be such a shooting, as, if pursued with effect, would make the fact amount to the crime of murder. The other act is rather an extension, by words more full than those of the former act, to that which was the object of such former act. It is made a capital offence (among other things) for any person to shoot with any instrument, loaded gun, or pistol, at any other, with intent to murder, or to do any personal injury or bodily harm to that other person; and it declares all persons principals, not only who shall shoot, but who shall be present, aiding, abetting and counselling the fact.

Upon these acts of parliament the indictment is founded; and the charge in the first count is, that the prisoner, and another man unknown, shot at this prosecutor of the name of Hinchliffe. It is varied only in this respect, that the charge in the second count of the indictment alleges, that a person unknown shot at Hinchliffe, and that the prisoner being present was aiding, abetting, and counselling that person unknown in shooting at him. The two other counts are founded on the more recent statute; and in order to bring the offence within its purview, the third count charges, in so shooting at him, an intent to murder; and the fourth count an intent to do some bodily harm to Hinchliffe. These are the only differences.

There can be no doubt (and I do not leave it to you as a question at all) whether the prosecutor, Hinchliffe, did receive an injury of this description from the hand of some person or other; and it is not pretended that the prisoner at the bar was the hand that actually fired. The questions, therefore, for your consideration will be, first, whether he was the person who was present with the other man at the time that this act was committed:—I do not mean literally when the pistol was firing, but whether the prisoner was the person who went with the other with pistols, in the way you have heard described; and if he was that person, then, whether he went with an intent to execute with the other that fact which the other did execute.

In support of this indictment, John Hinchliffe has stated, that he lives at Wickens, in the township of Upper Thong. He is a woollen manufacturer, and had been parish-clerk of Holmfirth not quite a year. He has known the prisoner, Schofield, many years; they got acquainted with regard to music, Hinchliffe being a little in the habit of teaching persons to sing, and the prisoner being one of the persons whom he taught. These were questions put, to let one see how far he knew his voice; and he says, that from having taught him to sing, and occasionally meeting him at other times, he became well acquainted with his voice. He says, that he has lived in that neighbourhood himself either six or seven years; that he is married, and has six children, who, in July

ast, all lived with him. Jonas Moody was his next-door neighbour, and Thomas Hinchliffe lived next to Moody. It seems these three houses of theirs were all under one roof. There is a fold before each of the houses, and a road before the fold. In July, the prisoner lived at Lower Thong, about a mile from Wickens, and he has lived there ever since the witness knew him. Upon the 22nd of July, the witness went to bed, with his family, between ten and eleven. In the night somebody came and knocked at his door, he thinks between eleven and twelve, but he says he has no clock. Most probably you all know with how much uncertainty people in the country speak of time, when they have no clock to go by; and indeed, how frequently it happens, even in moderate houses, where there is a clock, that is not always at the right time of the day; so that persons speaking of the time of the day, at different places, may speak very differently indeed. The voice called out, "Does John Hinchliffe live here?" He was waked with this noise, and said "Yes;" and he says that he knew the voice that called out so, and it was the prisoner John Schofield's; and that he has no doubt about it in his mind. He says he got up and went to the door, just as he got out of his bed; he opened the door; he found at the door two persons, both of whom had pistols in their hands, and had hats on, and one of them had over his face what appeared to the witness to be a handkerchief of a light colour. He made an attempt to shut his door again when he saw the pistols, but could not. A voice spoke, and said, they would not hurt him. They both fastened their arms on his shirt (he being quite naked, except a shirt) one on one side, and the other on the other. He told them they would hurt him; they said they would not; and they asked the road to a man, not mentioning the name of any man. Just at this time a horse came up the lane, trotting. Schofield (as he calls him) had a handkerchief over his face, which was accidentally drawn on one side, so that he swears he saw part of his face; that he knew his person, and he saw so much of his face as to know it was his. He says it was very light, the moon being near the full. Schofield, on the horse coming up, ran away. After Schofield ran away, he cannot tell how far, the man that was left asked him what he had been doing. He said he had been doing nothing amiss to any man. The man said, he was a liar, and that he had been fetching a warrant against John Schofield. The witness said, that he never had; that he never was before a magistrate in all his life, on that business, or any other. He says this was all that passed after the first man had taken to his heels, and it took up a very short time; that then the man who was left, whistled, and he himself set off, and ran towards his neighbour, Thomas Hinchliffe's, and the man who remained, fired at him, and he was struck in his left eye; he cried out with all his might; the man ran

away, and he himself was let into his neighbour Thomas Hinchliffe's house.

He then says, that in the month of May preceding, he had seen Schofield (this was in July, you will recollect), it might be ten weeks before; that he saw him in Upper Thong Lane, when the witness was going home from Holmfirth Chapel, on a Sunday, between five and six in the afternoon; that Schofield overtook him on the road, and said he was going to get some drinking with him; that was about half a mile from his house; that when they came to a turn in the road, Schofield wanted him to go with him a different road from that which led to his own house; and he accordingly went with him to a place called Wickens Dyke, two or three hundred yards, when Schofield asked him, if he was a Ludd; that he said "No;" and Schofield asked, "would I be one?" the witness says, he said "No;" but Schofield took a paper from a breast pocket, and began reading to him from that paper. He remembers the name of God Almighty being introduced, and about a society, and what would happen to any one who declared what passed. He says the prisoner told him they were wanting to get a body of men within the liberty of Holmfirth; that they had got one at Huddersfield, and wanted to get a body of men in all places, and then it might be settled in a moment; and every place might do its own, and overturn the government. You, gentlemen, will bear in mind all the while, it is not for any offence of this kind; not for any of this seditious conduct, that the prisoner is now trying. However, he stated to the witness, that he had been upon that business that morning, and was going to a meeting then, and there would be men from Manchester, and different places, at the meeting. He said two delegates were to be fixed, to go to London, to the House of Commons, to see what they could do there; that there was a regiment of soldiers twisted in,\* all but one serjeant, officers and all, and four of the Queen's Bays too. Then they parted, and the witness went to his House. This was in May, about ten weeks before this fact which we are now inquiring into, took place.

Then, he tells you, that on the 20th of July, two days before this fact was committed, he again saw the prisoner; that he came to his house at Wickens, in the morning, it might be between six and seven; that he was in bed, and his family was up; that the prisoner asked him, if he was not for getting up, and the witness got up directly; the prisoner said he wanted to speak to him, he wanted him to go out with him, which he did, into a field. Then the prisoner asked him, whether he had declared what he (the prisoner) had said to him, for he had heard the witness had de-

\* "It will be satisfactory to the well-disposed part of the community, to be informed that this was mere gasconade, for which there was no foundation whatever." *Orig. Ed.*

clared it to Mr. Blythe (who it seems is constable of Holmfirth); and that Blythe had declared, that as soon as York assizes were over, he would have him (Schofield) taken up, and sent to York Castle, and that he should remain imprisoned there for six months, if he got nothing else. The witness said he had not told Mr. Blythe (and he tells you this was a fact), but that he had told a Mr. Keeling, and several other persons, whose names he mentioned. Schofield, upon this, said it was a very bad job, if he had told them about the paper, that is, the paper which you will recollect he had pulled out, containing the oath. The witness said that he had told, and then the prisoner said he did not know which way it could be gotten over; he said his life was in the witness's hands, and that it would not be amiss to tell a lie, and swear it, to get him off. At that time they parted. He saw nothing of him after this till the 22nd, when he received the wound. He now speaks to the person of the prisoner, partly from the observation he made of his voice; the only opportunity he had of taking notice of his person, was in consequence of the handkerchief being on one side, and the whole of the face not being covered.

He says, on his cross-examination (and that certainly is so) that he has not always given the same account as to his knowledge of the persons. He says, that on the next day, when he was examined before the magistrates, he was ill; he was so ill, as perhaps he might think he should die, and he did think he was in danger of death. He was examined before two magistrates, but could not recollect every thing; and that is the reason, he tells you, why he did not then mention every thing he has now mentioned respecting his knowledge of either of the persons. He fancies that there was the same in the examination then taken, that he has said to-day, but that he has now related rather more, for that at that time he did not recollect every thing. You will consider, whether the injury he had received, had for a time taken away his power of recollection, or not; or whether he was intimidated. He has not gone the length of saying that he was intimidated. All that he says is, that he did not recollect every thing. The account, he says, was taken before Mr. Scott and Mr. Armytage; the first appears to have been taken before Mr. Scott, on the very day, and the second afterwards, on that same day, before Mr. Scott and Mr. Armytage. He says he cannot tell how long these magistrates were with him; that they went to Blythe's house, where he was, for the purpose of taking his examination; he was then in bed, and the examination was written by Mr. Scott; it was read to him, and he signed it. It might be three weeks or a month after the 22nd, before he mentioned Schofield being one of the persons. The fact is, that the magistrates never heard him mention his knowledge of Schofield being one of the persons, till the time that the pri-

soner was examined after he had been apprehended and brought back, which was on the 31st of August; and he says, that before that time he certainly told every person that asked him, that he did not know the persons; but he says now, that at the time he did know that Schofield was one of them, but that when he was before the magistrates, his recollection and faculties were not complete.

Gentlemen, they then proceed (after some objection taken in point of law to this indictment, and to the evidence in support of it, which I was of opinion was not valid, and accordingly over-ruled) to call other witnesses. Thomas Hinchliffe stated, that he is a neighbour to John Hinchliffe the prosecutor, and lives, as the other had described, under the same roof; that he heard a noise; that at first he could make nothing of it, he thinks there were two voices; he knew John Hinchliffe's voice, and heard him say "Witness to any body," and then he heard a fire-piece go off, and he heard him say, "Tom, Tom, Tom, there is a man has shot my eye out." He got up as soon as he could, and unlocked the door, and let him in. John Hinchliffe said, "My eye is bruised all to bits," and he bled hard. This, he says, according to his time, by his clock, was half past eleven, or better. His clock he looked at by moonlight. It seems it was a very light night, being about the full of the moon.

Francis Freeman is an officer at the White-chapel office in London. He says, in consequence of a hand-bill, which had been made very general, offering a reward for the discovery of the offender in this transaction, on the 5th of August he went on board an outward-bound American ship, *The Independent*, of New York, and on board he found the prisoner Schofield. The ship was in the London Docks. He asked him if his name was John Schofield. He said it was. He asked him how long he had left the country; and he said about a fortnight. He asked him what part of Yorkshire he came from; the prisoner said Nether Thong, near Huddersfield. So that the account he gave of himself so far was a true account, admitting that he was John Schofield, that he had lived in Nether Thong, and that he had left that part of the country about a fortnight before. Freeman asked him if he knew any person besides himself, of the name of John Schofield; and he said there was nobody of that name but his father. Freeman asked him if he knew John Hinchliffe, of that neighbourhood (and this is a material fact for your attention); he said he did not, nor had ever heard of the name of John Hinchliffe. He then showed him the hand-bill. He said that was his name, and likewise the place he had left; but he did not know the name of Hinchliffe. He says he told him, that under the circumstances he must have him before sir Daniel Williams, the magistrate; and he observed his dress was exactly as described in the hand-bill, which he

showed the prisoner. This amounts to proving that John Schofield was the person taken up, and was the John Schofield who came from Nether Thong. He describes his dress that he had on, a blue coat and light-coloured ean pantaloons. He asked him, in the way of the magistrate, whether his family knew the passage he was going to take to America. He said they did, and that his wife's uncle lived in America, and in consequence of some letters written to his father, wishing him to come over, he was going; that his uncle was a grocer and farmer, and he thought he could do better there than here; that there had been a letter, about six months before, from his uncle in America. This witness further says, that, in consequence of some directions he received from the country, he went on board again to search for a light handkerchief; that he searched a trunk, of which the prisoner had furnished him with the key; the prisoner did not go on board with him, but told him where the trunk was, and told him to bring he apparel he found in it. There certainly was a very small quantity of clothes for a voyage of that description, one handkerchief, one shirt, and two pair of stockings. He kept possession of the handkerchief, and let Schofield have the other trifling things again. The prisoner said he had purchased the pantaloons at a shop near the London Docks; but, after his examination, he said he should not know the shop again.

They then called a gentleman, who was clerk of sir Daniel Williams, one of the magistrates at the police office Whitechapel, London, who proves the prisoner's examination taken before he magistrate, which is to this effect:—He says, "My name is John Schofield, I come from Nether Thong in Yorkshire, I am a farmer; I worked with my wife's father, Samuel Jagger, who has a farm at Nether Thong, which place I left a fortnight since to norrow. I walked to Leicester, and came up to London in a coach called the Nelson, which took me up a little before I came to Leicester. I worked with my father John Schofield, who is a cloth-weaver at Nether Thong. It is about five years since I worked at that trade. Since that time I worked as a farmer. I have a wife and one child, who are at her father's at Nether Thong. I was going to New York, to a relation of mine, an uncle, whose name is George Hirst, and who keeps a shop there; his father is a farmer, and lives at Greeth, in the township of Nether Thong. My uncle never wrote me any letter inviting me to come to New York. He wrote a letter a few months back to his father, desiring me to come over to him. I brought about ten guineas, in paper money, with me. I was to pay fifteen guineas for my passage to New York. The other five I had from my relation, Mr. Blackburn, weollen-wreper, in Aldgate, where I have slept since my arrival in London, which was last Monday week. My chest is on ship-board; I have no objection to have it examined. I have no ob-

jection to go down to Yorkshire to clear myself. I set off from Nether Thong on Thursday morning the 23rd of July;" and it was certainly so from what the father says, that he went away some time or other on that morning, the 23rd of July. Then he says, "I do not know any such person as John Hinchliffe, of Upper Thong. I did not hear that he had been shot, before I left the country; I did not know that he had been shot;" he repeats it "I set off myself, and came alone all the way to London. I brought up with me two shirts and three pair of stockings; I did not mean to have any more until I got to America. I bought the lead-coloured pantaloons I have on, at some house near the London Docks. I can show any one where I gave eight shillings for them; the person gave me change for a one-pound note." This is the substance of that information which has been taken.

They then call Joseph Scott, esq. a magistrate of this county, who states, that the prisoner was examined before him, upon the 31st of August. Mr. Scott also states, on being cross-examined, that he took the examination of the prosecutor on the 23rd of July: that he was sent for to the place where the prosecutor was lying, at Blythe's the constable of Holmfirth. Mr. Armytage accompanied him. He says, he thinks they arrived there about half past eleven; that the prosecutor was in bed, and appeared to be in a dangerous state; that he entered into conversation with him; he appeared to be impressed with a considerable degree of fear (that is the appearance which Mr. Scott thought he observed about him) but he did not collect from him, that it was the fear of death in consequence of indisposition. He certainly appeared to him, in perfect possession of his faculties. He took down his examination in writing; the prosecutor assented to it, and, he believes, signed it. Mr. Scott says, that he ought to state, that they warned the prosecutor of the awful situation in which he was, and that death might ensue; but that he did not conceive him to be under the apprehension of death from what had happened.

This is the examination of the prisoner Schofield, which was taken before Mr. Scott on the 31st of August, when he was committed, of course after he had been brought back from London:—"For my part I was in bed at the very time when John Hinchliffe charges me with being at his house. I lodged with my father, I am a married man. I never had any oath, nor do not know the meaning of it. I have not any thing else to say at present. I am well acquainted with John Hinchliffe of Wickens, in Upper Thong" having, as you will recollect, when the officer apprehended him on board of ship, denied all knowledge of John Hinchliffe. "I have been with him many hundred times, singing; he taught me to sing; the last time I saw him was on Tuesday morning; a part of what Hinchliffe says, is true; the reason I went to him was, I heard at Holmfirth, that he had been saying something to Blythe about

me." He certainly, according to the prosecutor's account, had been under apprehensions on that account, and had been with him two days before, saying, that he had heard, he had told Blythe what had passed about ten weeks before, when the paper was produced, and the conversation took place relating to the oath and the insurrections.

They then call Alexander Hollingworth, who is a prisoner for debt in this Castle, and who states, that in the month of July last, he was a neighbour of Schofield's father (the prisoner, you recollect, lodged with his father); that he (the witness) heard of Hinchliffe being shot, on the same morning on which it had happened; that he set out for his work about six o'clock; he lived near Hinchliffe, and as he was going to work, he saw the prisoner and his father mowing together; he called to them out of the road, and said, "Here is a sad misfortune has happened in our town." The prisoner and his father lived in Lower Thong. The old gentleman asked what it was. The witness said, "Somebody has shot at John Hinchliffe." The prisoner stood close behind his father; no answer, he says, was made to him; no doubt they might not hear what was said, but he does not doubt but they both heard. The son said nothing, one way or the other. He has known the young man eighteen or nineteen years, and has never known any thing but what is good of him. This is the case, gentlemen, laid before you on the part of the prosecution.

The prisoner, in his defence, does not deny the circumstance of his having absconded at the time that has been mentioned, that is, the 23rd of July, the day after the transaction; but he accounts for it in this way; that, hearing that Hinchliffe was shot, and Hinchliffe and he having had some former conversation, of which Hinchliffe had spoken, and Blythe having said he would send him to York, he was afraid Blythe would put his threat into execution, and that was the sole reason of his leaving home, not having had any share in the fact of shooting Hinchliffe. That is the footing he puts it upon; that it was in consequence of the conversation he had had with Hinchliffe, and which he understood Hinchliffe had revealed. It does happen, certainly, that the absconding takes place on the very day after the fact of the shooting.

Then, on the part of the prisoner, they put in, by leave of the Court, the prosecutor's examinations, both of them taken on the same day; the first of them before Mr. Scott, and the latter of them before Mr. Scott and Mr. Armytage. In substance I think they agree; there is no material difference between them. The observation that arises from them is with respect to the description, which, upon the 23rd of July, the prosecutor gave of the persons who had done him this injury; and that he then said he could not distinguish the face of the man who fired the shot, and that he did not know him; that he appeared to be a decent-looking young

man, dressed in a dark-coloured coat, and light-coloured breeches; that he whose face was covered (having described one as having his face covered) was dressed in a light mixed coat, something like a shooting jacket, and appeared to be about five feet ten inches high; that the man who fired, had on a dark-coloured coat, and a pair of light-coloured breeches, and spoke, as he thinks, in a feigned voice. Certainly he did not, upon his first examination, say that he knew either of them; on the contrary, he mentioned the face of one of them being covered, but did not say there was any part of the face uncovered, so as to give him an opportunity of seeing any part of the face. In the examination taken the same day before two magistrates, he says expressly, that he does not know either of them. He certainly did not give any account to the magistrates, nor as it appears to any body else, that he knew either of these persons, till the final examination of the prisoner on the 31st of August. Then, for the first time, he gave any account of his knowledge of the prisoner. He has now positively spoken to him from his voice, which, he says, he had had an opportunity of hearing in singing, and in conversation. He had conversed with him ten weeks before, on the subject of the intended insurrections; and he had conversed with him, you observe, two days before this injury, on the subject of the witness's having made a discovery of what had passed before them on the former occasion. The fact is (and you are to judge of it) that he did not at that time state the name of the prisoner, or any suspicion of the persons who had committed this offence; on the contrary, it appears, that he told all inquirers, that he did not know them. Prudence might suggest why he should say so to general inquirers, but the same reason does not operate as it respects the magistrates.

The evidence which follows, is given with a view to satisfy you, that it is impossible the prisoner could, at the time of night which has been mentioned, have been in company with the man who fired the pistol. John Jagger says, he lives at Nether Thong, and has known the prisoner ever since he was born. He lives about 40 yards from the house of the prisoner's father; and the prosecutor lives nearly two miles from the witness. He remembers hearing of Hinchliffe being shot; he cannot recollect the day of the month; but the night before, he (the witness) was at a methodist meeting, at the prisoner's father's house, at which it seems he officiated in some way or other. It broke up, he thinks, about twenty minutes before ten; he says, he looked at the clock when the meeting concluded, but did not leave the house at the conclusion of the meeting; it was he believes, about half past ten when he went away. The prisoner was not in the room in which the meeting was held; but he saw him after the meeting broke up. He was in the house-part at the time when the meeting broke up. The meeting was in a little parlour.

When the witness left the parlour, he went into the house, and saw the prisoner sitting there; his wife was with him; they both sat by the fire: the witness sat down also. The prisoner and his wife left the house-part before he went away; and their leaving, according to his account, was by going up stairs. The prisoner said to his wife, "Betty, let us go to bed, and these people will have our room." The stairs opened into the house-part. They went up, he believes, before ten, he himself going away about half-past ten; and he saw no more of them at all that night; and that was the night that Hinchliffe received his wound. He never knew any thing bad of him, all his life. Then, he says, he is sure it is above a mile from the prisoner's father's to Hinchliffe's. We must take it, I think, to be about a mile, or a little above a mile; no very great distance. This man speaks to the prisoner's going up stairs a little before ten, apparently with an intention, at least professed, of going to bed; and his wife then going with him. It is impossible for him to state what became of the prisoner afterwards.

Charles Barker says, that he lives in the neighbourhood of the prisoner; that upon the evening of the 22nd of July, on the night of which this misfortune happened, he saw the prisoner at his own home, which was his father's; that he saw him at half past nine o'clock, as nearly as he can tell, and the prisoner's wife also. The witness was at the meeting. When he came out of the parlour from the meeting, the prisoner sat in a chair at the hearth-stone; his wife was there too; he had his stockings down, and his waistcoat loose; and he said, "Come, lass, we will go to bed;" and he and his wife went up stairs. Barker says, he remained in the house, after that, better than half an hour; he cannot say exactly how long, but it was after ten when he went out. He went home; his house is about two hundred yards, or better, from the father's house. Then he tells you, that he returned again to the prisoner's father's house that same evening, to borrow some list. You will observe his account of the prisoner would not have carried him much further than the other account by Jagger, namely, his going to bed at a little before ten, the witness leaving his house at a little after ten, and not having seen him go out during that time; but it seems he returned again to the house that night, for the purpose of borrowing some list. The prisoner's father is of the same trade; the list was wanting to lay on a piece of cloth. When he got to the father's house again, he says, it was within about five minutes of eleven; he then saw the prisoner in bed, as he swears; and the reason of his seeing him in bed was, as he wears, that having gone to borrow this list, while the prisoner's mother was weighing the list, he went for some water, in consequence of the prisoner's child being poorly; that the prisoner called to his mother to fetch him water, and the witness went for it instead of

the mother, while the mother weighed the listing, and that he went with the water to the prisoner, who was in bed; and when he got down again, and got his listing, he returned to his own house. That he has known the prisoner ever since he has known any thing; that he never heard any thing of his character, but what was right; that he is sure he saw both the wife and the husband in bed at that time; that the mother was in the chamber alone, on the same floor with the bed-room; that he did not look at the clock there when he came in, but it wanted five minutes of eleven when he got home to his own house, and he looked then at his own clock.

He is asked, how it happened that he had occasion to go out this particular night of all others, at that hour for list? he says he does not often go out for listing at that time of night; and that he never did so before at that time of night. Then he says that Jagger had finished his discourse, the witness being one of the congregation, about half past nine; that the witness looked then at the clock; that the prisoner and his wife were not in the parlour; that after this meeting was over, Jagger and he had pipes, and they went away a little after ten. A question was put by the counsel for the prosecution, to know how it happened that he went back again for this listing to finish this work of his, and how he came not to borrow it before he went away from the prisoner's father's? His answer is, that he did not know that he should want it till he came home; that a woman, whom he calls Betty Buckley, should have done the listing, but had not done it. He then adds, that when he went, he found old Schofield was gone to bed, but the wife was up; when the witness went away first, he left old Schofield up; that his family consisted of a grandchild, that lives with him; an apprentice boy, whose age is about eighteen; the prisoner, and his wife and child, and his own wife. He says, that the list is spun ready for laying on, in the chamber where old Mrs. Schofield was; that it was half a pound of listing he wanted, for which he went back again at that hour of the night; that for any thing he knows, old Schofield was in bed, but he did not see him; that the witness had got home to his own house, and gone to bed just after eleven; that he cannot tell whether the grandchild was up or in bed when the meeting was over; that he saw the apprentice, who went up stairs between nine and ten. He also says, that he left his brother working at home when he went to the meeting; and when he came back, he was short of listing; and he did not know that would be the case, and went back; but his brother had worked out what he had; he had reason to expect it would have been done by Betty Buckley, but when he returned she had not done the listing. This is his evidence. He speaks of seeing the prisoner, according to his account, going up to bed before ten o'clock, and that, returning a good while after, he found him in bed, some-



where about eleven o'clock; that he returned to his own home a second time, and it was a little after eleven when he returned, having left him in bed.

Then they have called Mary Woodhead, who is to prove his being in bed later than this; for she says she lives at Nether Thong, and is a neighbour of John Schofield, and sister of the prisoner; that upon the 22nd of July she had occasion to go to John Schofield's house at night; she went a little after twelve, she went to borrow a dose of Bateman's drops; her husband was ill, he had been taken ill the day before indeed, but she went at this time of night, because he was so ill that he grew worse and worse ever after he went to bed; that he had been in bed nearly two hours, and he awakened her a little before twelve; she got up and dressed herself, and went for the Bateman's drops; she went there, because she knew they had them generally in the house. John Schofield too is in the practice of giving medicines. She asked for the mother; she came, and the witness told her what she wanted; she did not see Mr. Schofield; the mother opened the door, and she (the witness) went into the house-part with her; the mother recommended a way of giving the drops in sage tea, and in order to get this sage, she went with the mother into another room, in which room she swears she saw the prisoner and his wife in bed; and she went into that room almost directly after coming into the house.

On her cross-examination, she says, that the mother gave her the drops below stairs, that the mother went up stairs for the sage, and she went to hold the candle while the mother looked for the sage. Being asked, why could not the mother have gone up to this room for the sage herself? she says she went to hold the candle while the mother looked for it.

John Brooke is called, who says he is a clothier, and lives at Upper Thong, half a quarter of a mile, or rather better, from Hinchliffe's. He remembers Hinchliffe's receiving the wound. He himself was from home till eleven that night, or after; he went home a little after eleven, and he heard the crack of a gun or pistol as he was going home; he was then a quarter of a mile from the house. The next morning he saw John Hinchliffe stand at Thomas Hinchliffe's door; he does not recollect that he had any conversation with him, but John Hinchliffe said, in his hearing, he did not know the persons who had done this.

Eli Hobson is then called, with regard to the prisoner's character. He describes himself to be a clothier; and says he has known the prisoner from his infancy, and has had a great deal of acquaintance with him, and that he never heard any thing against his character till this.

Jonas Sykes has known him several years, and says he always bore a good character since he knew him.

John Schofield, the father, was then put up on the part of the prisoner; but no question

was put to him by the prisoner's counsel. The counsel for the prosecution, however, put some questions to him; in answer to which he states, that he remembers mowing in the field the morning after this had happened to Hinchliffe, and he remembers Hollingworth (the witness on the part of the prosecution) passing by to his work, and telling him a sad misfortune had happened that morning at Upper Thong; that John Hinchliffe was shot; that he asked whether he was dead, and Hollingworth said he was not, but he could not tell whether he would die or not; and he says his son went away in about an hour after this had been said by Hollingworth. He states that he has no relations in America, that he knows of. It is stated in the prisoner's examination before the magistrate, that he was going to some relations in America; that examination had called them his wife's relations.

Upon this evidence, gentlemen, you are to decide upon the charge brought against the prisoner at the bar, which is in substance this: that he was present aiding and abetting the other man who shot at the prosecutor John Hinchliffe. And the first thing you are to decide will be, whether the evidence on the part of the prosecutor satisfies you, when compared with the evidence given on the part of the prisoner, that the prisoner was the person who came to the house of John Hinchliffe, at the time of night that has been mentioned armed with a pistol; that he was one of the persons who took him out of the house; and whether he came with a determined design of supporting another in shooting him, or doing it himself. The first question is, is he that man? Now that rests upon the evidence which has been given to you by the prosecutor Hinchliffe, who swears to his knowledge of his voice. He had taught him singing, and so had had occasion to hear his voice, and had had other opportunities of hearing it, in singing at different times, and in conversation with him so lately as the Monday before. He speaks not only to his voice, but to part of his countenance; which he says now was partly covered with a handkerchief, but that that did not cover the whole of his face; and he now undertakes to speak positively to the prisoner's being that person who was so joined with the other in the act which has been described. You will also take into your consideration the absconding of the prisoner upon the morning after this fact had happened. He went away, by his own account, exactly that very morning after it had happened; and he was then in a hurry, as it appears, preparing to ship himself for America, saying that he was going in consequence of letters that had come from relations in America; which relations it seems he had not; certainly, in that respect, giving a false account of himself, and stating also, both to the constable who went on board the ship, and likewise in his examination before the magistrate in London, that he did not know John Hinchliffe. It seems he made no scruple at all in acknow-

ledging his own name, that he was John Schofield, and telling his abode to be Nether Thong, according to the description given in a hand-bill which was shown him; but that he persisted that he did not know any thing of John Hinchliffe. It is for your consideration what weight is due to that circumstance, when it is proved that he had so great a knowledge of John Hinchliffe. You will, upon the whole, determine whether you are satisfied that he was the person present, when this violence was first offered to Hinchliffe, and who ran away a very few moments before the firing actually was done, and in the way stated, in consequence of the alarm of the horse.

He has in his defence denied that he had any thing to do with this affair; and says, that having (as Hinchliffe has in his evidence asserted) before this time made him acquainted with the bad connexions which he (the prisoner) had in what is called Luddism, and having attempted to swear him in to be one of that party, and having heard that Hinchliffe had given information to some gentlemen of this affair, he had shortly before stated that it was all over with him if he had given that information. And the colour which he now gives to his absconding, is, not that it was on account of this violence which had been offered to Hinchliffe, but from the consciousness that he was in danger of being apprehended by reason of the communication he had made to Hinchliffe on these topics, which would have afforded reason enough for fear, certainly. But the fact is, that the morning after this affair happened, he did abscond.

You will take into your consideration also, the evidence which has been given on the part of the prisoner, with respect to his being at another place than that where this fact happened, at the time when it happened. The precise time when it happened, perhaps, it is not extremely easy to ascertain. The prosecutor, according to his account, had gone to bed between ten and eleven, and was called between eleven and twelve, as he guesses it. His neighbour, Thomas Hinchliffe, to whose house he ran, says, that when it was over, and he had opened the door, and was going in, he looked at his clock, and it was half-past eleven. The evidence that has been laid before you, to prove what is called an alibi, would fix him with going to bed somewhat before ten o'clock, and being seen in bed by two persons after ten. The witness, Barker, tells you, that he had been at the house, and went back again, and saw him in bed at very nearly eleven o'clock; for he says (if he speaks truly, and if his clock went right) that when he went home with the list, it was past eleven at night. There is then the sister of the prisoner, who went at twelve o'clock at night (if she speaks accurately also) to the house of her father and mother, in order to get some medical drops to relieve her husband, who was very ill; she speaks to seeing him at twelve o'clock in bed, leaving him there when she went out.

It will therefore be for you first to consider, whether the prisoner was the person who was present when this offence was committed; because, if the evidence does not satisfy your minds that he was one of the persons there, it is immaterial to consider what share that person, who was there, took in the transaction. If it was not the prisoner at the bar, he is not answerable for what that person did. You will, when making up your minds upon this point, consider that the prosecutor had never spoken (even to the magistrate) to his knowledge of the person of either of the two men, or even to his suspicion, that one of them was the prisoner, till the 31st of August. If you are satisfied that the prisoner was that person, and then only, it will be material for you to consider, whether the share he took in the transaction does or does not implicate him in the crime imputed to him. Now, if these two persons (whoever they were) came with a premeditated design (and you should be of that opinion from the circumstances) either to shoot, or do some great bodily harm to the prosecutor, and if this calling him up was a mere contrivance to get him into their possession, that that purpose might be executed, they will both be equally guilty. If the prosecutor speaks truly, two persons laid hold of him, only with his shirt on, that is one of one arm, and one of the other, saying, they wanted him to show them where a person lived, not naming that man; and that then one of them ran away upon hearing the horse coming, and the other fired. If you can suppose they had come there really with a design only to get informed where the man lived, whose name they did not mention, and that that was not a mere pretence; and that the one man ran away, not having been privy to any design of the other to shoot the prosecutor; then to be sure he would not be answerable for what the other did in his absence. If he was privy to that, if they came with this joint design, and his intention was to do this man a mischief, then, under the circumstances stated, he will be, in my opinion guilty; for you will remember, both of them had brought pistols, and they were both endeavouring to get the man out of the house.

The questions for your consideration will be first, whether you are satisfied that the prisoner at the bar is that second man who was so present. If you are not satisfied of that fact, the other inquiry will fall altogether to the ground. If you are satisfied that he is the man, I mean, comparing the evidence which has been laid before you on the part of the prisoner, with that given on the part of the prosecutor, which I repeat again, is evidence given as to his knowledge of the party for the first time on the 31st of August; if you are satisfied, notwithstanding this evidence which has been given (not deciding upon conjecture only, but with certainty), that he was the man; it will be for you to say, whether he went with the other man with the criminal purpose im-

puted to him, namely, the aiding and assisting the other in so shooting at Hinchliffe. In deciding upon the evidence to prove the prisoner could not be there, you will take into your consideration the probable difference of clocks. You will likewise consider the character which has been given him. In doubtful circumstances, certainly a man's character is of consequence to him. Now, gentlemen, you will consider of your verdict, and will give that which will satisfy your consciences, and which will, I have no doubt, do justice between the country and the prisoner. If a doubt remains, it ought always to preponderate in favour of the prisoner.

The jury retired at half-past five, and returned in half an hour, finding the prisoner **NOT GUILTY**.

The grand jury having returned several bills.

Mr. *Park* observed, the gentlemen did not state whether they had any more bills.

Mr. *Lancelles*.—We have no more bills before us. We do not know whether there will be any more, or not.

Mr. *Park*.—Will your lordships permit me to say a few words in answer to that question? There are some other cases which my learned friends (whose assistance I have on the present occasion) and myself have considered; but we find, on the investigation of those cases, that many of the persons involved in them have been under the influence and control of persons already convicted; and therefore, exercising the judgment which is confided to us by the government, upon this subject, we think we can do no harm to the county, in the present state of it, but on the contrary we hope we shall do much good in respect of these deluded people, by abstaining at present from presenting any bills against them. Their attorney is in court, and I trust he will communicate to them this lenity shown to them on the part of government; and will give them to understand (as the fact undoubtedly is) that my forbearance at present does not exempt them from inquiry at a future time, if their conduct should not entitle them to that forbearance.

Mr. Justice *Le Blanc*.—The gentlemen will not press at this moment to be discharged.

Mr. *Lancelles*.—By no means, my lords.

Mr. Justice *Le Blanc*.—It may be very much for the public good, that you gentlemen should not be discharged.

Mr. *Lancelles*.—We should not have stated any thing respecting further bills, if we had not been asked.

Friday, 8th January, 1813.

[Before the sitting of the Court this day, George Mallor, William Thorpe, and

Thomas Smith, who were on Wednesday convicted of the murder of William Horsfall, were executed in pursuance of their sentence.]

### THE KING against

JOHN EADON.

The prisoner was arraigned, and pleaded Not Guilty, to an indictment charging him (in the first count) with having administered to Richard Howells an oath, accordingly taken by Howells, intended to bind him to be of an association, society and confederacy, formed to disturb the public peace; stating it in the second count, to be an oath intended to bind Howells not to give evidence against any associate or confederate in such an association; and in other counts styling it an engagement, and not an oath.

[The Indictment was opened by Mr. Richardson.]

Mr. *Park*.—May it please your lordships; gentlemen of the jury.—We are assembled here to-day to try a different species of offence from those that have engaged the attention of the Court for the last three days; but I am sorry to say that the offence now before you is deeply connected with those offences. The enormity of the crime, with which the prisoner stands charged, must be obvious to every person who duly considers it. It is, however, as it respects the prisoner, an offence which does not affect his life; for the statute, on which he stands indicted, subjects those who are convicted, only to the sentence of transportation, or any sentence of that nature the Court may think proper to award.

It has always struck my mind most forcibly, that much of the mischief which has affected this and other counties, is owing to the crime with which the prisoner is charged. The impropriety and profaneness of it must shock every religious mind. We have had instances, in which we have heard a great deal of religion, but it must be a false religion by which men can delude themselves into the belief that it is innocent to administer an oath, engaging those who take it to call upon the Almighty to sanction such enormous crimes as those to be concealed under the oath which you will hear. It displays a degree of impiety one could hardly believe to have dwelt in any human breast.

The act of parliament, upon which the prisoner stands indicted, was passed about fourteen or fifteen years ago, in consequence of some disturbances of this nature in a neighbouring county; and the act is so framed as to embrace every description of offence which can be committed in this way. The legislature wisely thought it was absolutely necessary to make it so comprehensive in its terms, that it should be impossible to evade the penalties of the law. I only mention as an historical fact,

that this crime having been carried of late in this and some neighbouring counties to a great height, the legislature has wisely thought fit to inflict the punishment of death upon this offence; but that does not reach the prisoner, for his offence was committed before the latter act passed. The act of 37 Geo. 3, is in these terms, "That any person or persons who shall in any manner or form whatsoever administer or cause to be administered, or be aiding or assisting at, or present at and consenting to, the administering or taking of any oath or engagement purporting or intended to bind the person taking it, to engage in any mutinous or seditious purpose;" and so forth. Therefore any of these are offences, either actually administering an oath, or being present consenting to its being administered, in whatever form that oath may be conceived. And by subsequent words you will find, it is not even necessary to go through any of the formal ceremony used in the regular administration of oaths, of calling upon God, by kissing his gospels, to attest what is said; it is no matter whether it is by taking of hands, or in what way it is taken, if it purports to bind in the nature of an engagement. And the purposes which render taking the oath penal, are very extensive: for if it be for any mutinous or seditious purpose whatsoever, if it be an engagement to disturb the public peace, or to be of any society or confederacy formed for any such purpose, or to obey the orders or commands of any committee or body of men not lawfully constituted, or of any leader or commander or other person not having authority for that purpose; or if it be not to inform or give evidence against any associate, confederate, or other person, or not to reveal or discover any unlawful combination or confederacy, or not to reveal or discover any illegal act done or to be done, or not to reveal or discover any illegal oath which may have been administered or tendered or taken, or the import of any such oath or engagement; it comes within this act, and subjects the person so offending to the punishment therein stated.

Thus you see, gentlemen, the object of the legislature most wisely was, to prevent in any the least degree so dangerous a crime as this; and well it might; because the unfortunate circumstance, in many of these cases has been, that this oath, though false, though improper, though it must be highly offensive, as I humbly conceive, to such a Being as we venerate as God, that a man should enter into such an engagement for so diabolical a purpose; yet it some how or other so impresses the consciences of these deluded men, and makes it next to impossible to arrive at the discovery of the nefarious practices of which they have been guilty. And therefore it is of the highest importance to society that this crime, whenever it is detected, should be severely punished.

I will now tell you in what way we propose to fix this offence upon the prisoner at the bar.

I do not know whether any evidence will be attempted on the other side, in this case; but if ever there was a case made out satisfactorily to the mind, this I am convinced will be so. The person whose name has been mentioned to you, Richard Howells, lived in the house of the prisoner, in the parish of Barnsley, in this county, in the month of May last. About the 20th or 21st of that month, he asked the prosecutor, or at least the person to whom the oath was administered (for the crown is the real prosecutor) to take a walk with him in the Old Engine Field; when they were talking there, he said, "What do you think on what we have talked about?" Howells said, "I forget what you mean." "Why that about the Luddites: I wish you would be one; and if you will, I know a man that can make you a Luddite." And the prisoner not finding any negative put upon this by the person with whom he was conversing, showed immediately who the man alluded to was, namely, himself; for he immediately took out a book, which the witness knew, from living with him, to be a Common Prayer Book, and said, "Pray what is your Christian name?" and on his telling him, said, "Say after me;" the witness did so, and kissed the book. The prisoner upon that gave Howells the oath in his own hand-writing, and I shall prove it, and shall prove by two witnesses that it is his hand-writing; and therefore upon this case I conceive there can be no possible doubt. The prisoner desired him to take care of it, and to get it off; and when he had done so, he delivered it to the next witness, whom I shall call, Thomas Broughton. Broughton delivered it to a sergeant in the South Devon militia, of the name of Prettyjohn, whom I shall call; and he delivered it to his officer, colonel Lang of that regiment. And here we have the paper, traced immediately from the hand of the prisoner, and proved to be his hand-writing by Richard Howells and Thomas Broughton.

Now, gentlemen, let me read to you this most horrible oath; I say most horrible; for if men are to endeavour to bind the consciences of each other by any thing so shocking as this, it seems to me civil society must be entirely at an end.

"I, Richard Howells" (we will say in this case), "of my own free will and accord" (it is wrongly spelt) "do declare and solemnly swear, that I will never reveal to any person or persons any thing that may lead to discovery of the same, either in or by word sign or action as may lead to any discovery, under the penalty of being sent out of this world by the first brother that may meet me. Furthermore I do swear, that I will punish by death" (so that even assassination or murder is to be in their judgment acceptable in the sight of God) "any traitor" (that is, traitor to themselves) "any traitor or traitors, shall there any arise up amongst us. I will pursue with unceasing vengeance, should he fly to the verge of statute" (I suppose it should be verge of nature). "I

will be just, true, sober and faithful in all my dealings with all my brothers. So help God to keep this my oath inviolated. Amen."

Gentlemen, I shall trouble you with no farther observations. It is impossible for me to do it. I cannot express to you in this place exactly the feelings of my own mind upon the subject; but it is one of those cases, that if it is brought home by satisfactory evidence to the prisoner, it must delight every good man that such persons are brought to justice.

[Howells having, in his evidence, said that he was not quite in earnest when he took the oath, the prisoner's counsel, when he was called on for his defence, took objection to the evidence.]

Mr. Williams.—I beg to submit to your lordships, that no one count is made out in proof. Every count in this indictment states, that the person already named, to whom the oath purports to have been administered, actually took the same; that the prisoner "did administer the oath then and there accordingly taken by the said Richard Howells." I do not mean to contend, for one moment, that it was at all necessary so to state; I apprehend the offence was perfect and complete, supposing the party intended to bind the man to whom it was administered. But I shall not waste your lordships' time by arguing what might be stated or might be omitted, but the question is, attending to the allegations as they stand, whether they are made out, supposing them to be material allegations. Without troubling your lordships further, I take leave to refer to the general principle laid down in *Williamson v. Allison*, which is in 2 East, 446; where the rule is stated to be this, that wherever an allegation material to be proved, is laid with a particularity further than is requisite, with which particularity it need not have been laid at all, and the whole is not so proved; where an allegation is encumbered with superfluous matter, but matter which cannot be rejected; if that allegation is not made out with the particularity with which it is stated, the indictment fails. Every count in this indictment only states a variation as to this being an oath or an engagement, and by stating different purposes; and alleges, that the prisoner did administer the oath to the said Richard Howells, so then and there taking the same; which I apprehend is to be understood as we understand it in common language. For if there be no other reason, or no paramount rule of law to the contrary, I take it to be clear, that every indictment, and act of parliament, and other instrument, is to be construed according to ordinary acceptance in common parlance. Then what is the evidence in the case? Why, that this man did not take the oath in earnest, he said he considered it to be in joke; that is, that he did not take it in the ordinary acceptance of the term, with a view to bind himself to his conscience. What, therefore, I humbly submit to your lordships is, that in point of

fact, the allegation made in each of the counts is not made out in point of proof; although, I fully admit that the offence would have been complete without stating that Howells took the oath, and that it would have been sufficient to say, that the prisoner administered it, without stating more.

Mr. Justice *Le Blanc*.—My learned brother and myself have no doubt upon this subject. The offence charged against the prisoner is, the administering. The objection is, not that the prisoner administered it in a joke, but that the man took it in a joke. The words of the indictment are, that the prisoner administered the oath so taken by him. Did he take it? He certainly took it, whether he took it in joke or in earnest; the oath was taken, the oath was repeated by him, the book was touched, and the book was kissed: and therefore, whether it was necessary to put the allegation into the indictment or not, the allegation, as put into the indictment, is proved. The prisoner administered the oath without any mental reservation. Suppose Howells had been a person, who for the purpose of detecting the prisoner, and knowing he was in the habit of administering these oaths, had put himself in his way, and had intended the very next day to go before a magistrate, and give information what the man had done; he would have been a person answering the designation in the indictment, as a person who took it, though he never meant to bind himself or his conscience, or to take any obligatory oath. It appears to me, therefore, that the allegation as stated in the indictment is supported by the evidence that has been given.

Mr. Baron *Thompson*.—I am very clearly of that opinion.

After one witness had been called by the prisoner, Mr. Justice *Le Blanc* summed up the whole evidence as follows:—

Mr. Justice *Le Blanc*.—Gentlemen of the Jury, The prisoner at the bar, John Eadon, is charged by this indictment with a simple felony; I say a simple felony, for it is not one affecting his life: but it charges him with administering, and causing to be administered, to one Richard Howells, a certain oath, then and there accordingly taken, which was intended to bind him not to inform or give evidence against any associate, confederate, or other person belonging to an association, society, or confederacy of persons, being an association, society, or confederacy, formed to disturb the public peace. The nature of this society is differently charged in the several counts of the indictment. In one count it is charged to be a society to disturb the public peace, and in another count, not to reveal or discover any act done by any person belonging to such society; and the other counts in the indictment charge it to be an engagement.

The question upon the present occasion is, whether the evidence which has been pre-

doed, and which I will detail to you, proves to your satisfaction or not, that the prisoner Eadon did administer such oath as taken by Richard Howells. The administering any oath whatever, innocent or unlawful, by any person not duly authorized by law to give an oath, was at all times, in the common law of this country, illegal, and a misdemeanor. But the particular act which is alluded to was passed in the year 1797, in consequence of the practice of administering oaths of this sort, which are illegal, and tend to operate on the consciences of ignorant men, to induce them to believe they have entered into some engagement, and that they would be criminal if they revealed any of those circumstances which might come to their knowledge in consequence either of being of such society, or entering into such an engagement. That, which always before was a crime and misdemeanor, the administering even an idle oath by a person not having authority to administer an oath, was, by that act, made more penal; and where it is intended to bind the party so disturb the public peace, or to be mischievous to society, it is made a felony; and it is with that felony the present prisoner is charged. And to be sure, after the inquiry in which you have been engaged at this time, one cannot want any arguments to show the bad effect of such oaths being administered. That, however, can have no effect upon the case of the prisoner at the bar, unless you should be satisfied that he did in fact administer this oath, as charged by the indictment.

The account given by Howells is this: he says that he himself was employed in the business of a weaver, and worked with the prisoner, at a place he calls the Old Engine; that he worked with him in the month of May; that he lodged in his house, and first went to live and lodge with him, and to work in his business, on the 18th or 19th of May, he will not be sure which. He says, that just after he went there, on a Tuesday, the prisoner began to be talking to him about the Luddites, and then told him he would make any body a Luddite; and that he had made a man in the shop believe that he could make any man a Luddite. He afterwards says, that man in the shop was a man of the name of Swift, who lodged there. He says that about two or three days after this conversation took place, on the 20th or 21st of May, the prisoner asked the witness Howells to walk out with him into the fields, and they accordingly went and took a walk out together; and when they were so out in the fields which he describes to have been in the evening, he asked him what he thought of what they had been talking about before. Howells said at first he did not recollect what they had been talking about. The prisoner then said, concerning the Luddites, and then asked him if he would be one. He said he would be one; and upon that, he says, the prisoner Eadon pulled out of his pocket a book, which he the witness knew to be the Common Prayer Book, put

it into the witness's right hand, and then asked the witness his Christian name, for the purpose of repeating the words of the oath, for the witness to follow him in the repetition, beginning with his Christian and surname. He says, that after he had given him his Christian name, the prisoner then began to say, "I Richard Howells," desiring the witness to repeat after him; and he then repeated by heart, and correctly, with the omission, I think, only of an expression or two, the form of what is called the oath, which is set forth on the paper afterwards produced. He says, that the prisoner first of all repeated it or spoke it by heart, and that he (Howells) repeated it after him, and that the form of it was—

"I A M I of my own free will and A Cowed  
"declare and solemnly swear that I will never  
"reveal to any to any Person or Persons  
"any thing that may lead to discovery of  
"the same Either in or by word sign or  
"action as may lead to any Discovery under  
"the Penalty of being sent out of this World  
"by the first Brother that May Meet me fur-  
"ther more I do swear that I will Punish by  
"death any traitor or traitors should there any  
"arise up amongst us I will pursue with un-  
"seencing vengeance, should he fly to the verge  
"of Statute. I will be just true sober and  
"faithful in all my dealings with all my  
"Brothers So help God to keep this my Oath  
"Inviolated Amen."

This, he says, was what the prisoner repeated, calling upon Howells to repeat after him, which he did; and holding at the same time the prayer book, which he says he had put into his hand, and which he afterwards kissed. He says, after he had so repeated it, he gave him the paper, and told him to get the paper off as fast as possible, that he might be able himself to repeat it; and then, when he had got it off, he told him to destroy the paper. This witness, Howells, says, he did accordingly put the paper into his pocket, and got it, it seems, pretty accurately; and that then he delivered the paper to Thomas Broughton. That he continued working and lodging in the prisoner's house, from the time that he first went to live with him, for two months; and that in the course of that time he frequently saw him write, so as to be acquainted with his manner of hand-writing; and that that paper which the prisoner so gave him, and which has been traced through different hands, is in the prisoner's hand-writing. He says that he saw him write three of the same description of papers as that which he gave to him, and which he bade him get off. He is then particularly asked, as to when he quitted Yorkshire, after this. He says he continued in Yorkshire till the month of September; and then he went away from this county, together with Thomas Broughton, to whom he had delivered the paper. He was asked, if he took away his clothes with him; and he says he went without packing up his clothes. It seems, upon inquiry, he had been before the magistrate, and that the magis-

trate sent him away in a hurry into another county, fearing he might be put out of the way, or something might happen; that it was not a running away of his own accord, but was the act of the magistrate, for his safety; and he says, that at the time he and Broughton heard of some being taken to York Castle, they left the county, and went to Shrewsbury, and from thence to Ludlow. He was particularly examined as to the time he went to live and lodge with the prisoner, which is not now material, as there is no clashing of evidence upon that subject. He says, that the time he gave him this paper in the field, was in the evening or night; that the prisoner had the paper in his pocket, and did not read the oath from the paper, but repeated the oath to him, after having asked his Christian name, and then bade the witness take it, and get it by heart, and then destroy it; that he read the words himself the next morning from the paper, and then recollected they were the same words which the man had repeated over to him the night before; that he should not have recollected them without. He is then particularly asked as to his knowledge, whether taking this oath was wrong? He says, "I knew it was wrong, but I did not much know what we were to do afterwards. I cannot tell whether it was in joke, or not; I was not in earnest quite, I was not serious when I took it; I thought the prisoner was joking with me at the time; and I spoke to him, and said 'I thought you were joking with me;' but he said, 'No, I am serious.'"

This is the evidence of the fact of the oath being administered, given by the witness Howells, who is the person charged in the indictment to have had it administered to him. The account given by Howells is, that he thought the prisoner might be in joke, and that he put the question to him, and that the prisoner himself said, No, he was serious. And it would be very difficult to conceive it otherwise, when he afterwards pulled the paper out of his pocket, and gave it to Howells to get it by heart, that he might be capable of administering it to others; with an instruction afterwards to destroy it. The circumstances seem to show that it could not be intended as a joke, but that he must be serious. That is the account given by Howells; and I think according to his own account, he himself was doing something more than an idle thing, because it was criminal in any body to consent to take such an oath. But you will see, from the whole evidence, whether that is a correct and true account, which he has given. It does not rest entirely on his statement of the matter, for the very paper put into his hand (and which he says he knows to be the prisoner's writing) has been preserved, and is traced and laid before you. He says he gave it to the witness of the name of Broughton.

Broughton's account is, that he being a weaver, knew Howells; that he went to see him, and he put into his hand that paper,

which has been traced to the hands of colonel Lang, and is now produced in evidence. He says that it was on the 12th of June Howells gave him the p. per. According to Howells' account, he had received the paper from the prisoner on the 20th or 21st of May; so that he had kept it between three weeks and a month. He says that Howells asked him (Broughton) to walk with him, and that the next day, which was the 12th, Howells put that paper into his hand; that he had seen the prisoner write at Salter's Brook once, and the occasion of his writing was, putting the names and the numbers of persons called delegates into a book, and making some memorandums in that book of the transactions that happened; and from that, as far as he can judge, he thinks this paper to be the prisoner's hand-writing. He says, that the paper continued in his possession from Friday, the 12th of June, when Howells gave it him, till Monday; so that it continued three days. On the Sunday he went to the house of the prisoner Eadon, and asked him (having that paper with him) what it meant; and then he gives you an account of the answer the prisoner gave to him. The prisoner, he says, said it was to form a regular organization in the country, to overturn the tyrannical system of government. He asked him for the particular signs and motions, that those who were of that association might know one another by; and he says the prisoner made a motion, by which they were to know one another. He says that after this had passed with the prisoner, he went to serjeant Prettyjohn, a serjeant of the South Devon militia, and gave him that paper, which he had before shown to the prisoner, and the meaning of which the prisoner had explained to him to be, that it was to form a regular organization of the country, to overturn the tyrannical system of government, as he expressed it. Broughton says, that at that time he lived about a quarter of a mile from the prisoner; that he did not know any thing of what had passed between the prisoner Eadon and Howells, till Friday the 12th of June, which was the day when Howells gave him that paper. He says, that he himself, though not a good writer, can write better than the person who wrote this paper. The paper certainly is not very good writing, but it is such as very well to designate the particular mode of hand-writing.

The next witness was serjeant Prettyjohn, of the South Devon militia, who says the paper was given to him by Thomas Broughton, on the 14th of June last, and that he kept it in his possession from the 14th of June till the month of September, when he delivered it to his lieutenant-colonel, lieutenant-colonel Lang of the South Devon militia.

Lieutenant-colonel Lang was then called as a witness; and he produced the paper, which he says he received from serjeant Prettyjohn, in September; he does not exactly know the day; that on the 29th of December he delivered it to Mr. Brown, who is an agent at

Sheffield, employed by the persons acting for government.

Mr. Brown is then called, and he identifies the paper, and shews it to be the same which he received from colonel Lang: So that this paper, produced before you, is, by a regular chain of evidence, proved to be the same paper, which Howells, the first witness, says he received from the hands of the prisoner on the 20th or 21st of May, when he states on his oath, that the prisoner administered the oath to him, and afterwards gave him this paper to get by heart, and afterwards to destroy it. Therefore, in this case, you see the precise form of the oath. That, gentlemen, is the whole of the case.

With respect to the witness called on the part of the prisoner, as far as he goes, he confirms the account given by the witness on the part of the crown, Howells, as to the time when he went to lodge and to work in the house of the prisoner.

The first and the material circumstance for you to consider, is, does this evidence satisfy you that the prisoner at the bar administered this oath to Howells? It must be administered by the party charged to have administered it, he intending that it should be taken by the party to whom he gives it as an obligatory oath, and meaning to bind him. Whether the man who took it meant to be bound by it, is not material to the charge against the prisoner, if he who gave it intended it should be considered as obligatory. That is what is charged by the indictment; and, to be sure, every circumstance attending it, besides the expression of the man himself, goes to confirm that; because, when he put a paper containing the same oath into his hands, telling him to get it by heart, it could be only that he might administer it to others. The next question is, whether this form of oath, which you have before you in writing, and proved to be in the prisoner's hand-writing (which was acknowledged by the prisoner to Broughton, to be intended to form an association in the country to overturn the tyrannical system of government, as he called it) is an oath within the meaning of the act of parliament, intended to bind the person to whom it was administered, not to inform or give evidence against any person belonging to a society or confederacy formed to disturb the public peace? I am ashamed to state that as a question to you, after the comment proved by the witness to have been given by the man himself; and if it had not been so given, the very wording of it imports that it is for that purpose, and not to reveal particular persons who should be members of that confederacy. If you are satisfied that the prisoner at the bar did administer it to this man as stated, he is guilty of the offence imputed to him. If you have a doubt whether he did so administer it, you will find him not guilty.

The jury immediately pronounced the prisoner.—GUILTY.

VOL. XXXI.

THE KING  
against

JOHN EADON and GRAVEN COOKSON.

For administering an unlawful oath to THOMAS Broughton.

The prisoners were arraigned, and pleaded not guilty.

Mr. Park.—Gentlemen of the jury; I do not trouble the officer of the court, or my learned friend, to state this indictment, because I do not mean to give any evidence upon it; for this reason, that Eadon is already convicted, by your verdict, of a similar offence to that with which he now stands charged; and Cookson, in my judgment, and that of my learned friends whose assistance I have upon this occasion, appears to have been a much less guilty man than Eadon. The consequence of which is, that as we are sent here not at all with any purpose of seeking for convictions against our own judgment, but for the sake of restoring peace to the country, we think that, consistently with our duty, we may refrain from giving any evidence against Cookson. We trust this lenity, if he is conscious of being guilty, will induce him to return to the course of honest industry; and not endeavour, by entering into associations of this kind, to assist in the disturbance of the public peace, which has brought so much distress upon the country.

Mr. Justice Le Blanc.—Gentlemen, you will find both the prisoners not guilty. The one is convicted upon a former indictment, which renders it unnecessary to proceed against him upon the second; and as to the other, there is no evidence brought against him.

The jury immediately pronounced the prisoners NOT GUILTY.

THE KING  
against

JOHN BAINES the elder, CHARLES MILNES, JOHN BAINES the younger, WILLIAM BLAKEBOROUGH, GEORGE DUCKWORTH, and ZACHARIAH BAINES.

The prisoners were arraigned, and severally pleaded not guilty, to an indictment, which charged John Baines senior with administering an unlawful oath to John Macdonald; and the other prisoners with being present aiding and assisting thereto, on the 6th of July last.

[The indictment was opened by Mr. Richardson.]

Mr. Park.—May it please your lordships; gentlemen of the jury;—on the trial of a former prisoner (John Eadon) you heard the law upon the subject of the act of parliament on which this indictment is grounded, so accurately stated to you by the learned judge who tried that prisoner, that it would be great impertinence



in me to trouble you with any further observations upon it, since you are most fully apprized of all its bearings. The six prisoners at the bar stand indicted for an offence similar to his. Fortunately for them, it took place previously to the passing of the latter statute to which I alluded; consequently it will not subject them to a capital punishment. There are, however, circumstances in this case greatly differing from those of the former, and it will therefore be my duty to state what those circumstances are; and I do it in the outset, because I think it does honour to those who set that conduct on foot.

You, gentlemen, know, yourselves, from the state of the country, the scenes that were taking place. It was known that these oaths were administering in this county, and it was seen that unless there was a detection of them, it was impossible the country should subsist; and therefore it was deemed wise, by those who have a considerable discretion to exercise with respect to the plan of government, to send from a neighbouring county into this, persons on purpose. My learned friends, who defend the prisoners, will have all the benefit of that fact, that the witnesses I shall call to you, came on purpose to detect these persons, or such others as might be engaged in these practices, and they were wisely sent. Some absurd visionaries have been of opinion, and have so declared; that it is highly criminal to send men in this way to get at the commission of crimes. It is a subject, you will suppose, I have well considered, and I have considered it in every bearing as a moral question. If a man goes to incite another to commit a crime which he had no intention to commit, if he seduces his neighbour from the paths of innocence to those of guilt, he is, without exception, one of the most infamous of mankind. But if you get at information that certain practices are carrying on by individuals most destructive to the state, and to the individuals composing the country, and you can arrive at the conviction of those who are so engaged, by no other means so well as by employing some one to see whether they are persons of that description or not; it is most highly laudable to bring such offenders to justice. It is of the highest importance to every peaceable subject, that they should be discovered and detected. I am very glad that the prisoner John Baines the elder, who appears to be a little deaf, hears what I say; I hope he, and all within the sound of my voice, hear it; for perhaps the preservation of the country has been effected by such means having been resorted to. The witnesses I shall call before you, are persons who have been so sent. If that be an offence which ought to prevent their being heard in a court of Justice, let it be so said, and there is an end of this prosecution; but I know the wisdom that presides here, and I know that that will not be said. They are to stand or fall, like all other witnesses, by the evidence they shall give, and

by the confirmation which that evidence shall receive; and you are to decide; upon your solemn oaths, the credit to which they are entitled.

John M'Donald is the witness I mean to call. I will tell you who he is; for it is totally indifferent to me what is done with this or that prisoner. If they can deliver themselves, I rejoice sincerely in it. I shall call, besides him, a man of the name of Gossling. M'Donald; the principal witness, and to whom the oath was administered, is an assistant constable of Manchester, under the direction of the magistrates and of the constables of that town. In the month of June, information was conveyed to the government, that in the neighbourhood of Halifax, from which these prisoners all come, things had got to a most dreadful pass; upon which M'Donald and Gossling were sent to Halifax.

Before I state the facts, I will tell you who the prisoners are. John Baines the elder is connected with the hat-making trade in that town; John Baines the younger is a nephew of the elder Baines; Charles Milnes is a card-maker. I know of no relationship between them, but a great intimacy, as you will hear. William Blakeborough is a shoemaker, and a companion of the other persons; and so is Duckworth. The little Boy, who, I understand, is of the age of fifteen, is the son of the old man, and a cousin of John Baines the younger.

When M'Donald arrived at Halifax, he went to a public house, and was very soon met there by some of the prisoners. You have heard already, upon the present commission, how astonishingly soon men of this description got to talk together, how ready they were to enter into conversation upon these subjects. And accordingly very soon after Milnes came in, he got very well acquainted with M'Donald, and they talked about Luddism, and things of that sort. He was asked, whether he had been sworn a Luddite; for it seems the oath which you heard read upon the former occasion, is almost in terms the same as was administered in this and other cases; it is called the Luddite oath. M'Donald was told he must be sworn in, before they could talk much to him, and that old Baines would do it. There was a good deal of conversation about this; and at last M'Donald said that he had no objection to be twisted in. Here we get to the point that you have already heard discussed by Mr. Williams, for I have no difficulty in avowing that M'Donald did not mean to bind himself by this oath; and it is not at all necessary that he should. The question is, whether the person administering the oath, meant to bind the conscience of the person to whom he administered it. M'Donald said he should have no great objection to take the oath. Milnes said, "I will take you to a man who has been in the business nearly twenty years, and he will do it for you to-night." They, M'Donald and Milnes, then

went to old Baines's house, and Milnes said to Baines, "I have brought a friend here; he is a stranger, but he is a very good fellow, and he wishes to be a brother." Baines replied, "Then we must be handy, for we shall have the watch and ward here soon; some of my neighbours have laid an information, and they are often searching my house." At this time, besides Milnes and Baines the elder, there were present, John Baines the younger, George Duckworth, William Blakeborough, and the boy Zachariah. They all then sat down, and had some conversation. After this, old Baines, who had before mentioned the watch and ward, repeated it; and M'Donald said, "I will go as soon as I have done." Old Baines then got a book about the size of a small Testament, and desired them all to stand up. It may at first view be distressing, to see a youth at that extremely early period of life tried at that bar, and especially when he is tried with his father at the other end of that bar; but you will find (and the humanity of the law of England every man is acquainted with) that malice supplies age, *malitia supplet etatem*. You must see what part this youth took, and if there be truth in the evidence here, it seemed to us it would be improper, young as he is, to leave him out of the indictment. Their lordships and you will deal with him as you think proper, and the punishment is in very merciful hands. But this youth was in the room, and took a most active part upon the subject. What the law looks to is, knowledge. Is there a distinction in the mind of the culprit, between right and wrong? The question is, if the crime be of that nature, that he knew he could commit it, whether he knew he was committing it? Secrecy was necessary on account of the watch and ward; this youth, therefore, when they were all ordered to stand up, and M'Donald to take the book in his hand, was ordered to place himself against the door; and he did so during the time the ceremony was going forward. Then old Baines said, "Take the book;" M'Donald did so. Then says he, "Now for your name?" "My name," says he (now my earned friend will say, he was not serious) "My name is John Smith." Then says Baines, "John Smith, say after me;" and he did so. In the last case, the witness had the oath in writing; that cannot be supplied here, nor is it necessary. The witness cannot tell you all the words of the oath, and it is hardly to be expected, except in such a case as the last, where the man was ordered to get it by heart. But he will tell you the purport of it; but he must not reveal any thing that might lead to a discovery, either in or by word, sign or action, under the penalty of being sent out of this world by the first brother that might meet him; and that he would punish by death any traitor; and should any arise up amongst them, he was to be pursued by vengeance to death. And then he took the book, and called upon the Almighty to assist him, that

he might keep that oath inviolate. And so the ceremony ended.

There was no great talk after that; but the witness, in order to carry on, what I will call in respect of him, a perfect mental reservation, proposed to give them some drink; but old Baines objected to that, on account of the watch and ward. Some of them, however, went out and drank. It is not necessary I should go through the whole of that transaction, but I shall prove to you that Gosaling, whom I shall call as a witness, in a conversation with Baines the elder, and several of the other prisoners, inquired, in the hearing of M'Donald, whether it was true that he had been twisted in; and without the least difficulty it was said that he had, but that there must be a good deal of caution used that it should not be mentioned, lest it should be discovered. I shall prove to you that this old man said,—and it is a melancholy consideration if it be true, but I shall prove it to have come from his own mouth,—that his eyes had been opened for three and twenty years, and now he understood the thing well. So that the evidence will prove to you in what system it was, that this old man thought fit to bring up his nephew and his son, and which he considered such an illumination of the sight. I shall prove these facts to you; and if these men tell you the story, which I believe they will (and I tell you beforehand, that they went on purpose to procure evidence against these persons, or any others concerned in these illegal transactions); and if you believe that their story is true (and I can see no reason to doubt that story being true); it will be your duty to find the prisoners guilty.

The whole of the evidence, as well on the part of the crown as of the several prisoners, is fully stated by the learned judge, in his summing-up.

Mr. Baron Thompson.—Gentlemen of the jury; this indictment is framed against six persons now at the bar, John Baines the elder, Charles Milnes, John Baines the younger, William Blakeborough, George Duckworth, and Zachariah Baines, on the same act of parliament as that indictment which you have lately tried. That indictment was against one prisoner only, and charged him with an offence similar to that which is contained in this indictment; namely, administering an unlawful oath, intended by the person administering it, to bind the person taking it, not to give evidence against any one belonging to a society or confederacy of persons formed to disturb the public peace. This indictment contains various counts, all framed upon different clauses in that wholesome act of parliament, and charging the administering of the oath to be with different intents; some of them to engage the person to whom it was administered, to become one of a society formed for the disturbance of the public peace; and others, to bind him to secrecy in regard to the affairs of such

an association so formed. The present indictment differs however from the last, in this respect, that the last contains a charge against one person only, for administering an unlawful oath; whereas this contains a similar charge against John Baines the elder, for administering an unlawful oath to one John M'Donald, and against the other five prisoners, including the young lad of the name of Zachariah Baines, for being present at and aiding and assisting and consenting to the administration and taking of such oath. For the provisions of this act of parliament do not stop with providing punishment for those who administer or who take an unlawful oath, but the act very wisely goes further, and makes all persons aiding and assisting at it (though they do not actually themselves administer the oath), or being present at and consenting to such an administration of the oath, principals, as much as the person who actually administers it. Now this being the charge against the several prisoners at the bar, namely, against the first prisoner Baines the elder, for administering the oath to John M'Donald with the tendency which has been stated, and against the others for being present at and consenting to or aiding and assisting in the administering that oath, you will attend to the evidence which has been given in support of the charge.

John M'Donald appears from his own statement to have been a person who was employed, and I say properly employed, in order to detect persons in that part of the country, who were guilty of the offence which is prohibited by this act of parliament; and he certainly went for that very purpose. These are expedients, which are necessarily resorted to very frequently in order to detect offences of this nature; and not only of this nature, but of other natures, which, but for what may be called a fair stratagem, would remain unpunished. Nothing is more frequent, than for persons to go to those who are suspected of unlawfully dealing in such articles as counterfeit bank notes, for the very purpose of buying those notes of the persons so suspected, in order to give evidence against them. And there really never can be any injustice done in such a case to an innocent man, for if the person applied to (as in this instance) is not one of that description, that is, in the habit of administering these unlawful oaths, and binding persons to the wicked purposes of such associations, it is impossible that he should in any way be trepanned into any such unlawful act. The question for your consideration on the whole of this case will be, whether this charge is sufficiently made out to your satisfaction against all or any of the prisoners at the bar.

John M'Donald has stated to you, that he lives at Manchester, where he is an assistant to the police officers; that in July last he went from Manchester to Halifax, accompanied by John Gossling, and arrived there on the 8th (he fixes, you will observe, the day, the 8th), about noon. They went to the first public

house, he thinks the sign of the Crispin; and in the course of the day he met at that house with Charles Milnes, one of the prisoners at the bar. Having dined, he and Gossling went out to look for lodgings. In about an hour or two they returned to the public house, and when they returned they found Charles Milnes there. This is the first time of their falling into company with the prisoner Milnes. He says that they entered into conversation with him, that they had been together half an hour in the room, and after having had some conversation with him, Milnes said, that he had taken a good many cartridges from some soldiers, that they had made a search for him, and he got away, and went to a shepherd's at Dean Common, and stayed there three weeks. M'Donald says, that he told him he was very glad that he had had the good fortune not to be taken; that there was then some talk about Mr. Cartwright's mill, and of two men having been killed there, whom Milnes said he knew very well; and Milnes told M'Donald of another person who had been acting as an officer on that occasion.

Now M'Donald began his operations. You see the conversation which they had had procured him the confidence of Milnes, for Milnes opens himself very amply to him upon the subject of the disturbances then going on in the country, and particularly of Mr. Cartwright's mill. The witness says, that he then said he would be as active as any of them, if he was sworn in. Milnes said there was an old man lived near there that would swear him in, having been in that way nearly twenty years. M'Donald says, that he said he was willing. They remained together there the afternoon, till it was getting dark, and then Milnes and he went out together. Gossling was not there, when they went out. Milnes took him to the house of the old man, John Baines the elder, in Halifax; it was nearly ten at night when they got there; and he swears that all the other prisoners at the bar were then in the house, and points them all out. Milnes introduced him, and said, he was a stranger, but a good fellow, and that he wished to be a brother. The old man said, they must be handy, for he expected the watch and ward. He got a paper, and a book about the size of a Testament, and gave the book into the witness's hand, and Baines first asked him what was his name, and he said "John Smith." Baines looked at the paper he produced, and appeared to the witness to be reading from that paper, and told the witness that he must say after him, which he did, repeating, "I John Smith." He speaks imperfectly to the whole of this oath from his recollection, but he states he knew it better at the time; what he now recollects is, that he must never reveal any brother's secrets, neither by signs nor words, and that any traitor that arose, he was to pursue them and put them to death; and he says there was also a great deal more, which at this time he cannot recollect.

That is the purport of what he states he was sworn to do—not to reveal any brother's secrets, neither by signs nor words, and that any traitors that arose he was to pursue and put to death. That was part only of the oath, but it is the only part of which he remembers correctly the purport. As to the very words of the oath, it is not at all requisite that they should be given in evidence, or charged in the indictment, only enough to shew its purport, and that the intention was, to effectuate the bad purposes of such associations.

M'Donald says, that having so repeated the oath, the prisoner Baines bid him kiss the book, and he did so; that the others were all sitting down when he began to administer the oath, that they all stood up at the time of administering it; and that even that boy, Zachariah Baines, appeared to take some share in this business, for at that time he stood at the door with his back, keeping it (as he expressed it). The witness says, he was afraid himself, lest the watch and ward should come in. He then got up, and said he would pay for something to drink for them; but the old man was not willing, for he said he expected the watch and ward, and they had better be going, for that one of the neighbours had reported to the magistrates what sort of a house he kept, and they generally came every night. He then tells you that he left the house, and that Charles Milnes, John Baines the younger, Blakeborough and Duckworth, went out together with him, being all but the old man and the boy. They all walked together to the door of the Crispin, which was the house that M'Donald had come from. There Duckworth left them, according to his account, and the other three went in with him. They either found Gosling (that is the friend of M'Donald) here, or he came in directly after, and they continued drinking together for some time. He says that he told Gosling, in the hearing of the three, that he had got twisted in; and that the three (which three are Charles Milnes, John Baines the younger, and Blakeborough), all of them, said that he had; and Charles Milnes said that it was he that introduced him, confirming, in this respect, the evidence of M'Donald, who had said that this business was performed by the introduction of him to the old man and the rest, at the old man's house, by Charles Milnes; that they parted about twelve or one, and they all accompanied Gosling and M'Donald to the door of their lodgings. The witness then says, that Gosling and he remained in Halifax some time; that Gosling and he and Milnes and Blakeborough, a day or two afterwards, went to Baines the elder's shop, which was a hatter's, and found him there at work, that they invited him to go with them to take some ale, and they went to a public house near Baines's workshop, which is supposed to be the George; he party consisted of himself, Gosling, the old man, Milnes and Blakeborough; that there was also another hatter that worked in the

same shop with old Baines, whom old Baines said he could trust; that they were in a room by themselves, and he (the witness) said to Gosling, "This is the old man that twisted me in," pointing at the elder Baines, and Baines said he had done it, but he put up his hands and said, he must always be cautious where he said this. The witness said he knew the company, and he was not afraid. Baines then began a good deal of conversation with Gosling. He remarked, in conversation, that his eyes had been opened a great while, a matter of three and twenty years. The witness saw old Baines again in a day or two afterwards, he met him in the street, Gosling was then with him; and old Baines told him they must be very careful, for he was informed there were two Bow-street officers in the town.

On his cross-examination, he says he is an Irishman, and is employed chiefly at the Police Office at Manchester, and was once a weaver. He admits that he has been tried and convicted for an assault at Manchester; the circumstances of it we could not minutely inquire into, but the fact is, that he has been in prison for that assault, and is brought here by a Habeas Corpus to give this evidence. He says he might be two or three hours in Halifax, before he saw Milnes; that he entered into conversation with him in a few minutes after he saw him, and had talked about other things before he mentioned the cartridges; it might be about half an hour. The witness says, he promised, that if he was twisted in, he would be as active as any of them. He had never seen old Baines before Milnes took him there, nor had he seen Duckworth, nor young Baines, nor the boy, to his knowledge. At the Crispin, after the swearing, there were present Blakeborough, Milnes, and John Baines the younger. When in a day or two afterwards he went to Baines's hat shop, there were two or three men, but he took notice only of an old man who came with him, whom old Baines said he could trust. He took notice at the public house (the George) of no other but the persons composing their company, except the woman who brought in the drink. On the night they went from Baines's to the Crispin, they sat in the kitchen; they were on one side, and the landlord, the mistress, and her or his sister, on the other. A part of the time he was at the Crispin, he said he was looking for work, and the other part of the time, he said that he was a hawker of handkerchiefs; and he says that he gave these accounts to prevent his being discovered. Blakeborough was with them at the George, and he was many times afterwards with Blakeborough and Milnes, and Milnes and he slept together one night.

John Gosling is called in confirmation of M'Donald's evidence, and states that he is a fusian-cutter at Manchester; that he accompanied M'Donald in July to Halifax; that they arrived the 8th July about noon (they both agree as to the day of the month), and went to the Crispin; that he saw Milnes there, after

he had been out from thence and had returned; that M'Donald and he entered into conversation with Milnes; that probably they had been half an hour in conversation before any thing was said relating to cartridges; that he believes the first of the discourse was about the badness of the times; that when Milnes found, after the discourse about the times, that he could put a little confidence in them, he stated that he himself had taken about sixty rounds of ball cartridge from one of the Cumberland militia, that they had searched for him, and that he had been brought before some person, but had run away and got to Dean Moor; that Milnes and M'Donald had some particular discourse, but of what it consisted he did not know, as he went out-leaving them together; that when he returned, after being absent about a quarter of an hour or twenty minutes, he thinks it was near hand upon eleven o'clock, and then he found there M'Donald and Milnes, Blakeborough and John Baines the younger. These were three of the prisoners at the bar, whom M'Donald had brought with him to the Crispin, from old Baines's, Duckworth having come to the door, but not gone into the house. He says he joined their company; that M'Donald, in their hearing, told him that he had been up into a house not far from there, and had got twisted in. Milnes replied, that he was the person that had introduced him. He says he asked the others whether it was true, and all the three answered it was true. Milnes said they were brothers then, and he hoped they would continue to be so. They continued sitting drinking together for some time after. He says, that in a day or two afterwards he went to old Baines's shop with M'Donald, Milnes, and Blakeborough; that they found old Baines there, and went with him to a house which he proposed, the Upper George; and another man, who was working in Baines's hat shop, went with them; old Baines said that man was a man he could trust. They went into a room by themselves, and M'Donald said, in the hearing of the rest, "This is the old man that twisted me in." Baines appeared to be rather alarmed. The witness asked old Baines, was it so? old Baines said it was; but he desired M'Donald to be very careful of the company he talked in, for he himself was not in the habit of having any thing to do with any people but what were acquainted with the two words Aristocracy and Democracy, and he asked M'Donald did he know the meaning of those words? M'Donald told him he did. Old Baines endeavoured to give them some idea of the words, and asked the witness whether he knew any thing of them. He says that he endeavoured to give him his little opinion (as he calls it) of those terms, and that then old Baines explained them himself, and said it was twenty-three years since his eyes were opened; that in a day or two afterwards they met old Baines in the street, when he asked

M'Donald how he was? and desired him to be careful, because he had heard there were two Bow-street officers in the town.

Upon his cross-examination, he says he did not see Duckworth upon the 8th of July. You will recollect, that according to the account of M'Donald, Duckworth went no further that night than to the door of the Crispin, and did not go in with the rest. He says, that at the Crispin, the first night they were in the kitchen, there were there, besides Milnes, Blakeborough, M'Donald, and young John Baines, a few soldiers on one side of the kitchen, and the mistress and master, and mistress's sister; young Baines, and the persons with him sat on a kind of sofa, and two other persons on the other side of the room. At the George he saw no persons but the party he has mentioned and the woman who brought the beer into the room; and there he heard Baines call M'Donald by the name of Smith. That is a confirmation of that part of the account of M'Donald, that he called himself by the name of Smith in the taking of the oath. He (the witness) went by the name of Downes, instead of his right name. He says that Milnes said he had stolen the cartridges, and said something about a soldier coming and searching for cartridges, and finding one; but he told the witness that the soldier had brought it with him.

Joseph Nadin, who is deputy constable of Manchester, is then called, and he says, that he knows M'Donald and Gossling; that they were employed by him to go to Halifax, and two other places, for the purpose which (as it is supposed) M'Donald afterwards executed, of pretending to be a friend to these men, and so having the oath administered to him.

This being the case which has been laid before you on the part of the prosecution, and in support of this indictment, charging old Baines with having administered this unlawful oath to the witness M'Donald, and the other prisoners with being present at and consenting to the administration of such oath, the prisoners have entered upon their defence; and I think the case of all of them (as it is attempted to be supported by their evidence) goes to establish the fact, that all M'Donald has said is a falsehood, because not one of these prisoners was at the time and place that M'Donald has mentioned.

With regard to old Baines, it is stated, that though he was at home during the period in which this transaction is supposed to have taken place, and for a great while before and after, yet he was at that time in company only with a son-in-law, who has been called; and with regard to the boy, that he spent the former part of the evening with his father, and that the latter part of it he was gone to bed. And as to the others, an attempt is made to show that they all were absent at the time this offence is supposed to have been committed, that is, that they were severally engaged at some other places at the very same time, so

that it should be impossible that any of them could have been at Baines's, and consequently that no such transaction could have passed. M'Donald is likely to be certain of the day, and you cannot suppose it was any mistake on his part to state one day for another. However, it happens that the prisoners have all given some evidence to induce you to believe that at the time he fixes on they were not there, and therefore that they cannot have committed this offence.

In the first place they have called John Thomas, to speak to the absence of John Baines the younger; and he states himself to be a master shoemaker, living at Luddinden, in Midgley, about four miles from Halifax, and says that he has known John Baines the younger for about three years; that Baines is a shoemaker, and the witness has employed him for that time; he speaks to his being a hardworking industrious man, and says that his character is that of a sober man. He then states, that upon the 8th of July John Baines came to him with three pair of shoes, which he had worked for him; as nearly as he can tell it was about seven in the morning of that day, when Baines came; he detained him that day, during which he employed him in repairing two pair of shoes, and set him a pair of new ones to make, and Baines continued in the witness's shop till about ten at night, and then they gave up work, the prisoner not having finished that pair of shoes; that they then went into the house, and got them a little beer (as he expresses it) and went to bed at the place he mentions, which he represents to be about four miles from Halifax; that Thomas Cockcroft was working in the shop the same time; and that John Baines the younger slept all that night in the witness's house, with a little boy, and he saw him the next morning before he left the house. He says that Baines in general works at his own house, but when they are very busy, and Baines brings in his work, they sometimes stop him to work there, and that he stopped that day and many other days at his house, perhaps once in a week or once in a fortnight. Then being asked how he remembers the day, he answers, that having received a letter to come to York, he looked at the book, and saw that this was the 8th of July, and that he looked at his bill to refresh his memory. This letter, it seems, told him he was to be subpoenaed, if he would not come without. He returned the letter to the wife of John Baines, the prisoner. He cannot tell when this letter was brought to him, but as nearly as he can tell, it was about six weeks ago. The prisoner was apprehended, I believe, some time in the month of September. He says, that he is sure the time to which he speaks, was Wednesday the 8th of July.

Then Thomas Cockcroft, to whom John Thomas had alluded, states, that he is a shoemaker; that he knows the last witness; that upon the 8th of July he was working all day

for the last witness, at his shop, and that he remained there till between eight and nine in the evening; that he saw the prisoner all that day at work there, and till he left that house between nine and ten at night; that he left the prisoner at that place behind him. He says that he himself lives at Midgley. Then being asked as to his memory of the particular time, he says that it is about two months since he was asked about this, and that was by Baines's wife. He is asked, how does he know this was on the 8th day of July? (for this detention of the prisoner at Midgley, during the whole day and night, is a fact which may have happened; and yet not upon the 8th of July); and he gives this account, that John Baines and he were talking in the shop about what sort of a fair he had had, and he says he replied, it was just a fortnight since, and that he knew it to be so, for that the fair was the 24th. To be sure, a little observation does arise upon this, for your consideration; which is, what had the question, which this witness Cockcroft put to Baines, to do with the answer Baines returned? What sort of occasion there was for him to refresh the witness's memory, as to the time when the fair happened, does seem a little extraordinary. However, that is the circumstance which, this witness says, refreshed his memory, as to the time when John Baines the younger was detained at the house of the witness Thomas, to so late an hour as nine or ten o'clock. He says that the prisoner Baines the younger was then in the employment of Thomas, and had worked for him two or three years, and continued to work for him till he was taken up; that he was in the constant habit of bringing his work from Halifax to Midgley; and he knows that his master set down his work in a book, which book is always in the shop. And being further asked as to the fair, he admits that there are three fair days, Wednesday, Thursday, and Friday; but Wednesday is the day on which he speaks of this having happened.

As to Duckworth, who is supposed not to have been at Baines's at the time M'Donald has spoken of, William Longbottom states, that he is a shoemaker, and lives at Out Lane, six miles from Halifax, where he kept the toll-gate; that he went to Halifax on the 7th July, on his way to Mr. Watkinson's at Ovendon, which is two miles from Halifax, to receive some money; that when at Halifax he went to William Duckworth's, the prisoner George Duckworth's father, for whom he occasionally worked; that when he had been there about half an hour, he met the son of Watkinson, and received information from that son, of his father not being at home, and so that he might save himself the trouble of going; that upon this he went back to William Duckworth's, and continued there the whole of the night of the 7th; and the next day, namely the 8th, he went to Watkinson's at Ovendon, and the prisoner George Duckworth went with him,

and they returned together to Halifax, and dined together at Halifax; that after dinner he began to work with George Duckworth at the father's; that they continued so at work till perhaps about eight, and then they took a walk together, and were out about two hours in the whole, and returned to old Duckworth's together; that it was then turned of ten o'clock, but very little; that they supped, and slept at old Duckworth's together; that the prisoner Duckworth was out of his company, on the 8th of July, from about eleven till near twelve in the morning, but was in his company the whole of the rest of the day; that he has known him thirteen years, and never knew any thing amiss of him. Being then asked as to the character of Milnes, he says he has known him five or six years, and never heard any thing amiss of him.

On his cross-examination he is asked, how he came to leave his turnpike in this way for several days together? He says he kept the turnpike from the 2nd, when he entered upon it, till the 7th, when his father came, and he left his father in the care of the turnpike, and went to Halifax upon the errand he has stated. He says that he slept both the 7th and the 8th at the prisoner Duckworth's father's house; and he tells you (being asked how he came to know the time of the night, and so on) that he looked at his watch after he had been in the house a few minutes, on his return from the walk on the 8th, so as to know that it was about ten o'clock he so returned, the prisoner Duckworth and he having been (according to his account) together, during the time they had so walked out together, from about 8 o'clock, till they returned about ten; that they looked at the clock when they went out, and at the watch when they came in; and he perfectly remembers the circumstance, though at this distance of time.

They have also called for the prisoner Duckworth, his father, William Duckworth, who states that he himself is a shoemaker; that he knows the last witness, Longbottom, very well; that he remembers his coming to his house on the 7th of July last, and remaining all night at his house; that the son and Longbottom were walking out on the forenoon of the 8th of July, he cannot tell how long they continued out together, but they came back to dine somewhere after twelve, and began work after dinner; they gave over working in the evening, he cannot exactly say the time, it might be eight, and then they went out; when they came in, his wife and he were sitting by the fireside, and were talking of going to bed; he asked them if they would have supper, and they supped together, and went to bed, it might be about half-past ten or thereabouts, and they slept together. He says that he recollects a particular circumstance, that he had settled a note with the last witness, Longbottom, and that he knows it from that circumstance. He says he knows all the prisoners at the bar very well, and that he never heard

of any charge against his son, till he was taken up in the month of September.

Thomas Helwell is then called, with respect to John Baines the elder; and he says that he is a soldier in the 33rd regiment, and is a son of Baines's wife; that he was in Baines's house the 8th of July, he went there at eight o'clock in the evening, and continued in the house till the clock struck twelve, comprehending, you see, the period which M'Donald speaks to; for he went long before that time, and continued two hours after that time; he says that he then left it, and old John Baines let him out, bade him good night, and locked the door. He says that the boy, Zachariah Baines, went to bed about eleven, and during the time he was there, the boy and his father were with him, and no other persons were there during the whole time. Being asked how he comes to remember that this was the 8th of July, he says that he was subsisted up to that day, and that he drew his pay on the 9th in the morning.

On his cross-examination, he says that he was with a recruiting party, and he had gone to this house of his father-in-law, to ask a question about his mother; that his father never was out of his presence from eight to twelve, nor was the boy Zachariah from eight to eleven, and that nobody whatsoever came to the house the whole of that time, and that no other persons were in the house. Having said he never had been with his father to this late hour before, he is asked how he came to be there so late on this particular day, what it was that engaged him there so long; and he says that he had been in the East Indies, and he started upon his travels (as he calls them), and it was the discourse that was started that kept them. Being asked whether he had never told his adventures before, he says that he had on various occasions before related to his father his travels in India, which he had ended nine years ago. And he swears, that during all the time he sat thus with his father in the house, there was no beer at all drunk.

Then they take up the case of William Blakeborough, and for him they have called a young woman of the name of Hannah Crowther, who describes herself as living at Gibbet-lane, in Halifax. She says, that she knows Blakeborough, and saw him in July last on the 5th, and the 7th, and the 8th, which is the material day; that the 5th was Sunday, that she had on that day proposed that she would go to Saddleworth on the 8th, with the prisoner, whose brother lived at Saddleworth, and asked her to come on a visit there. It appears afterwards that that invitation was given at the Christmas preceding, half a year before the visit being fixed on the 5th for the 8th. She tells you she went with the prisoner Blakeborough, that they set off between six and seven in the morning of the 8th, and went together to Saddleworth; that they got there at nearly twelve, walking all the way, being a distance of between thirteen and fourteen miles; that they never stopped, having taken

with them some refreshment to be used on the way; that she stayed at Saddleworth, at the brother's house, from the 8th to the 18th, ten days; that the prisoner stopped there the whole time in his brother's house, and he was not above an hour out of her sight, she thinks, the whole of those ten days. She is asked, how she came to go there with this prisoner, she being a single woman, which she says she is; and she is asked, how they all slept there. She says that they all went to bed at one time; she used to see him go into his bed-room up stairs, and she herself slept down stairs, and he always went up stairs the first. She is asked her way of life; and she says she lives with her father and mother, and she has been intimately acquainted many years with the prisoner Blakeborough's brother, who is a weaver. She is asked, how the prisoner employed himself during these ten days absence, from the 8th to the 18th; and she says the brother had two pair of looms, and that the prisoner wove; that he can weave, though he is a shoemaker; that journeymen shoemakers at Halifax were at that time out of work. We did not learn that account from the evidence of the shoemakers first produced with respect to the other prisoners. She says that Blakeborough's brother has a wife and one child. She is asked how she was maintained there, and she says she was no expense to them (here is a considerable difference as to the footing she was on, between her account and the account the brother has given), for that she took sufficient with her to pay for her board. She is asked, how much? and she says at once, that she paid him (perhaps she might mean that she had paid his wife, but her expression was, that she paid him) nine-pence a day, and that she paid him his when she left. She was asked immediately by the counsel for the prosecution, "How much did you pay him?" She said, nearly twelve shillings, having fixed the rate of her payment to be nine-pence per day; she then says, it was not quite twelve shillings, but near it, eleven shillings and six-pence, and was paid in silver. Now nine-pence a day for ten days would come to just seven shillings and six-pence. This, she says, she paid him on the 18th. Then the prisoner Blakeborough and she, according to her account, set out together from the brother's house, and arrived at Midgley that night between six and seven. She says, that her employment was burling cloth; that she had finished up her work on the 7th, and so they set out upon the 8th. This is the account that his woman has given of her having accompanied the prisoner Blakeborough to the brother's house, thirteen or fourteen miles off, endeavouring to account for him during every hour of the time of their visit; for she states that there was not an hour when he could have been absent without her knowledge.

John Blakeborough, the brother, states that he lives in Saddleworth; that upon the 8th of July last his brother came to his house with a young woman, this Hannah, whom he had in-

vited to come with him; that they got to his house about twelve, and stayed till the Saturday week after, which was the 18th, and that they both went away together; that they both lived at his house during that time, and that his brother was never absent from his house above an hour or an hour and a half at a time during that period; that he slept there all the time; that they went away on the 18th, between twelve and one. He is asked, when was this invitation to this young woman given, to accompany the brother to his house? And he says, that he had given an invitation, which it seems was a general invitation, when he was at Halifax the Christmas before; that he invited her as a visitor to his wife; that she employed herself working at her needle, but, he understood, for herself; that this young woman is no relation of their's. He says that the brother slept with him in an upper room, and the witness's wife slept with this Hannah in a bed in a lower room. Then, being asked upon what terms they were with regard to her being dieted there, he says, "She brought money with her, I believe, and supported herself." I do not exactly understand what that meant; but you will see what he afterwards says, that she paid him nothing for her board. I questioned him a little more about the circumstances of her paying for this board, and he says she did not pay him any money at all in silver, and he does not know that she paid his wife; when she came, she said she would pay something for her meat, but he does not know that she paid any thing; and he says, that he buys himself all the provisions for the family.

This, gentlemen, is the evidence which is given on the part of these several defendants, and the effect of which, if full credit is to be given to it, goes to establish the fact, that none of them could be guilty of this offence which is imputed to them, because the evidence tends to show that four of them were absent at other places at the time when the witness M'Donald has stated this to have passed; and as to the other two, namely, Baines the elder, and the boy Zachariah Baines, that though they were in the house in which M'Donald has laid the scene to have passed, yet what he relates cannot have passed, because the son-in-law of Baines the elder was with Baines and Zachariah Baines from eight till past twelve that night, and that no other persons came to the house.

Gentlemen, it is upon this evidence you are to decide, whether you are satisfied that M'Donald has spoken truly upon this occasion, whether you believe the account which he has given confirmed by the evidence of Gossling. You see Gossling has confirmed him in some part of the case, by proving several of the prisoners to have been that night at the Crispin, and stating the conversation that passed at that meeting. At that meeting, you observe, Baines the elder was not present, nor was Duckworth; but according to his account they went to the George in a day or two after-



wards, by the invitation of old Baines, whom they had seen at his workshop. There were Gosaling himself, M'Donald, old Baines, Milnes, and Blakeborough. At that meeting at the George, Duckworth was not present, nor was he present at the meeting at the Crispin. With regard to Duckworth, therefore, personally, it rests upon the evidence of M'Donald only; but it will be for you to say, if you believe M'Donald as to the rest, whether you will not credit him as to Duckworth also. It is extremely difficult to say, that M'Donald or Gosaling can be mistaken as to their persons, speaking to them in the way they have done; and it is very difficult to suppose that they can have fixed by any accident on a wrong day. You will consider, whether there may not be a possibility of the witnesses for the prisoners having mistaken the day, in which case, this defence set up by the several prisoners, of an alibi, might be perfectly true, except as to the time; but it is extremely difficult to suppose any mistake of that kind to have happened with regard to M'Donald and Gosaling, for if the evidence on the part of the prisoners be true, it must be a mistake with regard to one of the prisoners, Blakeborough, of ten days, or it is impossible that he could be there. Therefore, if M'Donald is mistaken, it is not merely a mistake of the 8th, 9th or 10th but a mistake, provided his defence is true, of the whole of those ten days, from the 8th to the 18th, unless it was a day previous to that proved.

The matter rests, gentlemen, for your consideration? If you believe the account which M'Donald has given, and think that he has neither wilfully nor by mistake misrepresented any thing as to the day of this transaction, and believe it implicitly, then it will be for you to say whether you are satisfied that the prisoners at the bar have done that act which this indictment imputes to them; namely, with regard to Baines the elder, that he has administered an oath, which oath was intended to bind the person taking it either not to give evidence against any persons belonging to an association formed to disturb the public peace, or for some seditious purpose, or to bind himself to become a member of some such society. You will take into your consideration, when you are judging of the intention, the nature of the oath, and the terms of it, imperfectly indeed as the witness remembers it. He does not remember the whole of those terms, but those he does remember are, that he must never reveal any brother's secrets, either by signs or words; and that if any traiters arose, he was to pursue them and put them to death. You will consider upon what occasion it was, that this oath was so administered; whether it was not under the impression of their having found, as they thought, a person of their own description; to which notion the witness M'Donald had deceived them, when talking of the disturbances in the country, and the attack upon Mr. Cartwright's mill, by saying he would be as active as any of them, provided he was only sworn

in, on which account, he says, Milnes took him to the house of old Baines. It will be for you to say, whether Baines the elder, in administering that oath, had not the intention imputed to him by this indictment, and whether the other persons were not aiding and assisting. According to M'Donald's account, all the other prisoners were there; the purpose for which he was brought there by Milnes was publicly declared to the persons there assembled; there was no secret made of it. The oath was administered by the old man Baines; and you will consider whether it is not established that they were all assembled there for that purpose. M'Donald states that the others were sitting down, but they stood up at the administration of the oath, and then several of them went away with him, and they drank all together.

There is the boy, whom one is sorry to see there; I do not mean to say that there is any impropriety in the prosecutors' having brought him there; he is of an age to be tried for this offence; but it is for you to say, whether he was cognizant of its being an unlawful act. The evidence against him is, that he stood with his back against the door, which, in the apprehension of the witness, was to keep the floor fast; but that is in his judgment only. If you think the case is made out against any of the prisoners, or all of them, according to this evidence of the witnesses, it will be your duty to find those guilty against whom you think it so proved. But the great and most material part of your consideration will be, how far you are satisfied with the defence which has been set up on the part of these respective prisoners, whether you give full credit to it. If you do give full credit to it, then to be sure they are placed in situations, in which it cannot be true that they did on the 8th of July concur in this unlawful act imputed to them. It depends upon this, whether you give entire credit to what has been sworn on the part of the several prisoners, or not. If you do not give credit to it, it will be for your consideration, how far all, or any of them, are involved in the guilt of this indictment. If you feel no doubt, it will be for you to find them guilty. If you believe the accounts, which their witnesses have given, it will be your duty to acquit them. You will consider of your verdict.

The jury retired at a quarter past eight o'clock, and returned in five minutes, finding John Baines the elder, Charles Milnes, John Baines the younger, William Blakeborough, George Duckworth, guilty; Zachariah Baines, not guilty.

*Saturday, 9th January, 1813.*

THE KING

against

JAMES HATCH, JONATHAN DEAN, JOHN OGDEN.

JAMES BROOK, JOHN BROOK, THOMAS BROOK, JOHN WALKER, and JOHN HIAST.

The eight prisoners (together with George Mellor, William Thorpe, and Thomas Smith, who were executed yesterday) were indicted, for that they, together with others unknown, were, on the 11th of April last, tumultuously assembled, and being so assembled did begin to demolish a certain mill of William Cartwright, at Liversedge, in the county of York.

The prisoners having been arraigned, and severally pleaded not guilty, the indictment was opened by Mr. Richardson.

Mr. Park.—May it please your lordships; gentlemen of the jury; we are now assembled to try a different species of offence, from either that of yesterday, or those of the preceding days. Gentlemen, this case is one of those, to which allusion has been made; it is connected with the system that has been prevailing in the country, and is one almost of the first of the desperate attacks that were made in this county, before that unfortunate event which deprived Mr. Horsfall of life. And you will find in the course of this, as indeed appeared in the course of that trial, that the irritation produced in the minds of the unfortunate persons who have suffered death for that offence, by what passed at Mr. Cartwright's mill, probably led to that lamentable event. The day that is material for your consideration here, is Saturday the eleventh of April 1812.

The act of parliament upon which the prisoners stand indicted, I will first state to you. It was one passed in the 9th year of his present majesty's reign, cap. 29. intitled, "An Act for the more effectual punishment of such persons as shall demolish or pull down, burn, or otherwise destroy or spoil, any mill or mills." I need not trouble you with any further statement of the title of it. It goes on to enact, "That if any person or persons, unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, shall unlawfully and with force demolish or pull down or begin to demolish or pull down any wind-saw-mill or other wind-mill, or any water-mill or other mill, which shall have been or shall be erected, or any of the works thereto respectively belonging, that then every such demolishing or pulling down, or beginning to demolish or pull down, shall be adjudged felony without benefit of clergy." This is the law upon which these men stand indicted.

It is well known, that in the manufacturing part of the West Riding of this county, there have been various implements of machinery introduced, and wisely introduced, for the purpose of expediting our manufactures, and bringing them into better use. The advantages to the labourers themselves, if they would have given themselves the patience to understand the thing, would have convinced them of the great utility of such machinery; but

unfortunately they took a different course, and would not stay to consider the great mischiefs they would bring on themselves, not only if punishment followed, but the absolute poverty, misery and distress which the destruction of those mills, where such machinery was used, must bring on all the unfortunate persons who were occupied in them. If they had so considered, I think that common prudence, independently of moral obligation, would have prevented their doing what has been done. For if only this devastation, which was intended for Mr. Cartwright's mill, had been effected, a number of families must have been thereby thrown out of bread, at least for a considerable time, till he could erect new works. It must, therefore, have produced dreadful distress. But that argument did not prevail with these misguided persons; and for a considerable period of time, these deluded, foolish, ignorant, and wicked men, were going round the country, destroying all the obnoxious machinery, and stealing arms; so that previously to the 11th of April, they had collected a considerable quantity of gunpowder, guns, pistols and other weapons.

Mr. Cartwright, whose mill, called Rawfolds mill, was so attacked on the 11th of April, had had previous notice, that among those people he had been denounced, on account of his employing the most improved machinery. In consequence of which notice, this gentleman slept in his mill for upwards of six weeks before the 11th of April, deserting his family (for his dwelling-house was elsewhere); and not only that, but he had beds prepared for five military, and four of his own workmen. He prepared for his defence, as every prudent man should do; and I have only to lament, that the same spirit Mr. Cartwright displayed, was not displayed by other gentlemen, whose property was threatened. Probably if that spirit had been manifested, their lordships and you would not have been troubled on the present occasion. I will not go through all that he did with his mill. It seemed almost impossible for any, but a most active military force, to destroy the works he erected there. But there is one thing I must mention, because it affords almost decisive evidence against one of the unfortunate men now at the bar. It seems the different floors (I think there were three above the ground floor) were laid with flags of a considerable size, in a row, which were raised obliquely, so as to make loopholes; so that if any man should attack the lower windows of the manufactory with hatchets and hammers, those within might fire down upon them; and Mr. Cartwright furnished himself with muskets and gunpowder for that purpose.

On the 11th of April (for I will now state the facts, applying them afterwards to the men at the bar) Mr. Cartwright will state, that he had retired to bed soon after twelve, having previously ascertained that his watch-

men were on their posts; two of whom were set on the outside, to give notice of the approach of an enemy; but, like many more of our watchmen, they were surprised, and were actually seized, before any alarm could be given by them. About twenty-five minutes before one, as well as he could ascertain the time, a large dog, which was chained on the ground floor, began to bark furiously. This gentleman, whose feelings were all alive, immediately jumped out of bed, and flew to the stairs; but while he was doing so, being still in his shirt, he was astonished by an immediate heavy fire of musketry poured into his upper windows, and violent hammering at the door next to the road; for you will find by the description, that this mill had a pond on one side, so that it was to a certain degree protected. Mr. Cartwright and his men had piled their arms the night before; he immediately rushed towards them, and met his own men and the soldiers, without any covering but their shirts, having just jumped out of bed. By his orders they commenced a heavy firing from within the mill, and this they continued, as will be proved to you, upwards of twenty minutes. The mob, during that time kept up their fire also; and you will find that it consisted of more than an hundred persons. They broke all the windows, many of the window frames, and one of the doors, calling out, with the most horrible imprecations (which I shall not repeat) "Bang up, lads!—Are you within, lads?—Damn them, keep close." Mr. Cartwright had placed an alarm-bell at the top of his building; this was rung with considerable force, till the bell-rope broke. The mob, upon hearing it ring, called out, "Damn it, silence that bell." But two of Cartwright's men went up, and rang the bell, by turns firing and ringing. At length, the firing still continuing from within, and probably the ammunition of the mob running short, the assailants began to slacken fire, and at last it entirely ceased, except that one man fired a single shot at the close. Mr. Cartwright heard the people go off towards Huddersfield, and, when their clamour subsided, was able to hear the groans of some who were left behind wounded, but he was afraid of going out, lest it should be said that he had murdered them. It was so dark that nothing could be distinguished by sight. But when assistance came, Mr. Cartwright and his men went out, and found a great number of malls, hammers, muskets and so on, left on the road to Huddersfield. They also found two men, who were too badly wounded to escape, and who afterwards unfortunately died, upon whom the coroner's jury sat, and found a verdict (as they were bound to do) of justifiable homicide.

Now, gentlemen, the way in which I propose to fix the prisoners at the bar, or some of them, is this. You will observe what extreme difficulty there must be in such a case as the present. Here is an attack made, at which no

persons can of course be present, that are not themselves criminal, except the gentleman who is the object of attack; and he, from his situation, could not know any single individual who was present. I shall call before you no less than three of the persons who were at that attack; two of those three persons have already gone through the ordeal of an examination here; they have been examined, and with strict and proper strictness cross-examined by my learned friends, who were of counsel for those prisoners against whom they were called. I shall call before you also a person, who has likewise been examined before, not an accomplice, though not free from blame, because he did not communicate facts within his knowledge; a person of the name of Sowden. The general circumstances, to which Mr. Cartwright will speak, will be fully confirmed, or rather he will fully confirm the accomplices. I shall call before you this Sowden to confirm these men, who will prove, that a person of the name of Dickinson, who is not charged, for he has not been found, came to the manufactory of Mr. Wood. Mr. Wood's name has unfortunately been too often mentioned, and whether he knew more than has been discovered, God and his own conscience only know; but at Mr. Wood's house it seems wonderful that all these transactions should be going on, and the master of these men know nothing about them. But Sowden will prove, that on the morning of the 11th of April, Dickinson came to Mr. Wood's, and that at that time there was a great deal of conversation. He will tell you also that there was before that a great deal of conversation with John Walker and Jonathan Dean, two of the prisoners at the bar, about commencing the system of frame-breaking, in the same way that the breaking of stocking and lace-frames had been carried on at Nottingham; when it was proposed, that those who would not join them, should be turned out of work; and that he was asked by Mellor and Dean to join them, but that he never did. He appears to me to be one of those fanatical enthusiasts one has seen about the country; but when he was before examined, I saw nothing in his manner to entitle any one to say he was not deserving of the credit he demands. This witness has also heard Dean mention that he was one of the party. He will prove also that Dickinson distributed ammunition, when he came to the manufactory on the morning of the day that this attack took place; and it will be proved to you, that it was settled at that time where they were to meet; that they were to meet at about eleven o'clock at night, in a field belonging to sir George Armytage, near what is called the dumb steeple, by which is meant an obelisk in sir George's grounds. It will be proved to you that there they went. That fact the accomplices of course will prove, for nobody else can. There they assembled; and one of the unfortunate persons now no more, George Mellor, seems to have been one of the most

active leaders of the body. He appears to have acted as a kind of commander in chief. They were placed in military array; they were formed into companies, and marched in platoons, thirteen in front. How many rows there were, the witness cannot tell, from the darkness of the night. The men who had muskets, marched first; the pistol-men, next; and the club-men and staff-men, and those without fire-arms, marched in the third division; the musket-company commanded by Mellor; the pistol company by Thorpe; and by whom the third company was commanded, does not appear. They marched in this body to the mill, and they there made the attack which I have already mentioned to you, and which I shall not repeat; and they went off in the way I have already told you.

Now I must apply the rule of law which is admitted, and which the learned judges have stated to you, upon the subject of accomplices. The common cases of accomplices have been those, in which a crime has been committed by perhaps two or three or four men at the utmost, and where A. B. wishing to relieve himself, might be suspected of endeavouring to throw the guilt on an innocent man. But in this particular case, which, I thank God is, and I trust will be, the last instance of the kind, the body being extremely large, it is impossible to suppose that A. B. can fix on one, two, three, or even six, from such a motive, because that would not answer his purpose, as in the common case of a crime committed by a few. The rule of law laid down by one of their lordships, the other day, was that which every lawyer heard with entire satisfaction, and to which I have no doubt every lawyer will accede. It has been usual to confirm the accomplice in some of the transactions to which he speaks; he cannot be confirmed in the main transaction, because, if he was, we should not call him as a witness, but should put him upon his trial. What is expected, is, that we should confirm him in some of the minute particulars. It is not necessary, where an accomplice is called against a greater or a less number of persons, that he should be confirmed in the facts respecting every prisoner. Mr. Baron Thompson, in his charge to a jury on Tuesday, sitting in your place, stated the law most accurately. I have the Report,\* and I perfectly recollect it: "It is not necessary that an accomplice should be confirmed in every circumstance he details in evidence. That would be almost a matter of impossibility; that is certainly too much to be expected, and never is required. It is quite sufficient to see, that, in some material acts, the witness, who shall have been an accomplice, is confirmed to the satisfaction of a jury; and that confirmation need not be of circumstances which go to prove that he speaks truth with respect to all the prisoners, and with respect to the share they have each taken in

the transaction; for if the jury are satisfied that he speaks truth in those parts, in which they see unimpeachable evidence brought to confirm him, that is a ground for them to believe that he speaks also truly with regard to the other prisoners, as to whom there may be no confirmation." His credit is to go to you; his credit stands or falls, not by the circumstance of his being confirmed as to all the men, to whom he is speaking; but if he is confirmed as to some of the men, and you find him speaking the truth as to some, and in some of the particulars, it is a fair ground for you to believe that he speaks truth as to others.

The accomplices will speak to all the prisoners now standing at your bar. Now, therefore, taking that for granted, I will endeavour to shew you how I can confirm these accomplices as to some of them; for I state at once in the outset, that I cannot confirm them as to circumstances concerning all. But I have been extremely careful, as far as my judgment would enable me to go, and I hope that that care will not be made use of in any way against the conduct which has been pursued. Although I did not doubt about some of the other persons, who were to have been named in the indictment, I have not allowed any to be included, against whom all the accomplices did not speak, unless where there existed other circumstances of confirmation.

I will endeavour to go through the names of the prisoners in the indictment, excluding the three first, who are not here to answer for this offence. The case of James Haigh is one, respecting which I think there can be no doubt. I told you before, in the narration of the circumstances, that there was a firing. The next morning after this affair happened, James Haigh applied to a country surgeon, for a cure for a wound in the shoulder. The surgeon asked him his name. He would not tell him. The surgeon asked him, how he came by that hurt? and he said, he had received it by having fallen in jumping down a quarry. Now I apprehend that it had no appearance of being a wound such as a man would sustain by falling into a quarry, for it went in a slanting direction, and some of the linen of the shirt was carried into the wound. The surgeon dressed it as well as he could; he sewed it up, and he gave the prisoner some salve to dress it; and Haigh went away. You will find that he never appeared at his work again, but slipped away in the night, with his master, a man of the name of Ardron (whom he can call, if he chooses) to the house of a person of the name of Culpan, thirteen miles off; they arrived at Culpan's in the dead of night, and knocked up Culpan and his wife between three and four in the morning. Culpan has but one room, and one bed for himself and his wife; and Ardron told him, "This is a poor man, a friend of mine, he wants to rest a bit, he has had an accident with his shoulder, I wish you would let him

\* See above, p. 17.

sit here." The poor man said it was very awkward, they had but one bed; however he and his wife got up, and gave that bed to Haigh. The prisoner afterwards went from place to place for many days, and did not return to his work; and when he was apprehended, the shirt he had on was taken off, and the magistrate kept the shirt, which will be produced to you; and, I understand, from the hole it will appear most manifestly that the wound was received in the way I have stated.

With respect to the next prisoner, Jonathan Dean, I shall prove to you that he was wounded in the hand; and I shall call Sowden, who will prove that Dean was one of the persons who declared at Wood's shop, when talking about shear-breaking, that he who would not join, should be turned out of work; and that he has heard Dean admit that he was at Cartwright's attack, and received the wound in his hand through the door, while he was in the act of striking it with a hatchet. The accomplices will prove that he was wounded in the hand, and here is an admission by the man that he received that wound thereby, and I think it will be proved to you, independently of this, that Dean was continually using persuasions to others to induce them to become of the same party. But in order to put that, of which we have had too much experience under the present commission, entirely out of the question, I shall read to you the examination of Dean himself, which I apprehend will be quite decisive, and that it will be your duty to find him guilty.

The next person named in the indictment is John Ogden. With respect to him, the confirmation as far as I recollect, is not very considerable, but it will stand, as I before stated to you, upon the manner in which the witnesses shall tell their story. They will swear that Ogden had a sword (I believe it was the only one in the company), and that he broke it in the scabbard, and part of the scabbard will be produced. He returned from the attack with Drake and Ben. Walker, through Clifton. I shall rely upon their evidence, if they give it in such a manner as to entitle themselves to any degree of credit; confirming them in other circumstances respecting other prisoners, and leaving it to you that there is every reason to believe that they speak truth as to these.

James Brook is the next. I have the evidence of only two as to him. I told you I had selected the cases to which all the three accomplices spoke; I believe only two of the accomplices will speak to this prisoner, but I have better evidence to supply the place of that third accomplice in this instance; and the very circumstance of their not all speaking to the same men, is certainly a confirmation of their testimony, for it shows it is not a made-up story. I have the evidence of a woman, who lived next door to James Brook, who had the curiosity natural to women; and her attention being excited by the outrages committed at that time in that neighbourhood, and every

body being in a state of alarm, this woman the morning after the attack on this mill, listened to what was said upon the subject, and she heard James Brook say, that he had never seen any thing so dreadful as it was. I will read the very words, which I understand she will repeat, without saying that they were applied to Rawfolds' mill. It will be for you to consider to what they apply; I do not say you must necessarily draw the conclusion I do. "Before I will be engaged in any thing of this sort again, I will suffer myself to be clammed to death; it was one of the most dreadful things I ever saw, and one might hear them screaming for half a mile." I shall prove by Mr. Cartwright that he heard the screams and groans of the mob for a considerable time, in consequence of the very proper conduct of the people within the mill.

The next person in the indictment is John Brook. This man has, independently of the fact that will be sworn to, of his being there, admitted in conversation that he was there, and said to another person, whom I shall call, while a search for arms was making at Wood's shop, that the fire-arms were removed, that he removed them, and that no one knew where they were, but himself and the persons who received them.

With respect to Thomas Brook, there is a very remarkable circumstance I shall establish as to him. It will appear to you, by the evidence of Mr. Cartwright himself, and of one of his men, if it be necessary to call any of his men to confirm him (and I must call a man to speak as to this fact perhaps), that in the post at the back of the mill, amongst other things, there was found a hat. This hat will be produced to you. It belonged to Thomas Brook; at least we say so, the accomplices will say so, and I shall confirm them by proving, that in their very home after the attack upon this mill, when they were driven off, they stopped at the house of a man of the name of Naylor, and borrowed a hat of his wife; she was asked, whether her husband was at home? to which she answered, he was not; as he was not. I shall call her. Whether she will prove this fact or not; I am not sure, for she will not speak out; but that hat was, as I shall prove, afterwards sent home to Naylor's house. It is my duty, therefore, to impress these facts on your consideration; you will always judge of the circumstances.

The next prisoner is John Walker. In addition to the testimony of the accomplices, I have the evidence of Joseph Sowden, who will tell you that John Walker took the active part which I have stated, in coming to Wood's manufactory, and speaking to them about the system of shear-breaking, and solicited the witness, with Dean, to join the party. Sowden will tell you of his positive refusal; he will also further tell you, that he heard John Walker admit that he was at the attack upon Mr. Cartwright's mill, and that whilst he was looking in at the window during the attack, a ball

truck the edge of his bat; that he had noticed the flash of the musket within, and that he hereupon thrust his hand and pistol through the broken window, taking the best aim he could, and that he was determined to do it, if his hand had been shot off, and both hand and pistol had fallen into the mill. I do not state this to be true, but that Walker made this statement after the attack, whether boasting of his own prowess, I care not; but he confirms the accomplice in this way, that he was at that attack; and Sowden will go on to say, that both before and after that attack, he threatened him, and did every thing he could to persuade him to join them in these outrages.

Gentlemen, I hope you and my lords will not think I have trespassed too long in this narration; I am nearly at the end of it. On the part of Hirst I have an express admission, saying, "We were ordered to meet at theobelisk in sir George Armytage's fields. When we got there we found a great many men, who said, that if we did not go with them they would shoot us." Very likely threats were used with respect to them. "So we went to Rawfolds, and we saw some firing, to be sure. I came home as far as Hartshead with William Hall." Hall will prove his coming home with this man, and that he was there at the time of the attack.

This is the case I have to lay before you. From my experience here on these trials, I know I am to expect some defence; I am to expect a defence probably as to character. But permit me to say, the defence as to character, hitherto, has not been at all applicable to the subject. It has been proved that the prisoners are honest, industrious, hard-working men. What has that to do with their allegiance and submission to lawful authority and government? It has no bearing on it. And I am sorry to say, that these deluded persons, and others in their situation (I say this publicly and openly, for the purpose of its being made known) have got it into their heads (where such an erroneous idea both in law, morals, and religion, can be found, I do not know) that it is no harm to destroy this property, if they do not steal, and do not commit murder. This is the doctrine, I am told, that these people hold out among themselves. If they put such an unction to their own souls, they will find, when it is too late, that they have flattered themselves in vain. If any persons have imposed upon them, it is a dreadful responsibility. If persons in higher life have held out to them such doctrines, their guilt is most enormous, and they may have to consider whether they are not answerable for the crimes of these unfortunate men. The deliracy of the English bar has introduced a sort of custom, not to put questions on cross-examination, to witnesses called to character; and that course we have generally pursued. We have also had the defence of alibi; and I would remark, that alibis are generally true in substance. I know persons, unaccustomed to these matters, are

often induced to say, How can people make up such a train of circumstances? Why, the circumstances, gentlemen, are generally true; only give another date, and then the story is all true. And their maxim is, as it was said yesterday, that it is no harm to tell one lie to save a brother.

When you have heard the evidence, you will lay your hands upon your hearts, and, upon the consideration of the whole of the circumstances that may be proved, will give a just verdict.

The evidence for the Crown, and for the Prisoners, will be found fully stated in the following Summing-up:

Mr. Justice *Le Blanc*, Gentlemen of the Jury: This charge, the inquiry into which has occupied the whole of your day, is brought against the several prisoners at the bar, of the names of James Haigh, Jonathan Dean, John Ogden, James Brook, John Brook, Thomas Brook, John Walker, and John Hirst, eight in number; who stand indicted, with three other persons, who are not now at the bar, having been convicted on a former indictment, of a heinous offence.

The indictment charges that they, with a number of other evil-disposed persons, assembled together at Liversedge on the 11th of April, unlawfully, riotously, tumultuously and feloniously, to the disturbance of the public peace; and that being so assembled, they with force unlawfully and feloniously did begin to demolish and pull down a certain mill of one William Cartwright, there standing and being, against the king's peace: So that the substance of the charge is, that these persons, with a great number of others, assembled in a riotous manner, did not demolish, but began to demolish and pull down the mill of this Mr. Cartwright. And it is founded upon the positive law of the country. A former act, which may be better known by the name of the Riot act, had for the purpose of preventing the ill consequences of a number of evil-disposed persons meeting riotously and tumultuously and doing mischief, made it penal (in the same manner as this act now does with respect to mills) for persons so assembled either to set fire to or demolish or pull down any houses, barns, or a variety of other things which are there enumerated. In process of time, as mills became frequently the object of the vengeance of persons tumultuously assembled, this particular act, which was passed in the 9th year of the present king, was made to include mills of all descriptions, because it uses the expressions "wind-saw-mill or other wind-mill, or any water-mill or other mill;" so that there is no doubt it includes all mills by which a power is used for the purpose of working machinery, just in the same manner as it does mills either for grinding flour, or for performing the operation of sawing timber; and that it makes it in the same manner penal, to demolish or begin to demolish or pull down mills

of any description, as the former act had made it to begin to demolish dwelling houses. Therefore the only question will be, whether these persons, or any of them, did assemble in a tumultuous manner, and whether they began to demolish this mill. It was not, in fact, demolished, in consequence of the spirit displayed by the owner of it, and which one wishes the possessor of every house, and of every description of property in this country, that may happen to be attacked, would display; and that each would collect what force he could, and stand forward in the defence and protection of his own property, receiving such assistance as the government and the laws of his country would afford him. It would prove the most effectual and the best way of suppressing all tumults and riots of this description, if at the first moment every person would manfully stand forward in the manner this gentleman did, in the defence of his property. And it appears that by making the best defence he and the persons in this mill with him could, they in fact succeeded in driving the assailants off, before they had demolished the mill; but you will consider whether they had not begun to do it, looking to the instruments they brought with them, and the progress they made in that which they appear to have gone there with an intention of doing.

The first witness called is Mr. William Cartwright, the possessor of this mill, situate at Rawfolds, in the township of Liversedge, which he held under a lease, and which was used for the purpose of finishing cloth. He says, that a short time before the 11th of April he had entertained apprehensions that an attack was meditated, and was in the contemplation of some of those persons who were actuated by that very mischievous spirit which was then afloat in the country, and that it would be made upon this mill of his at Rawfolds; that he had slept in the mill himself for six weeks before, and had armed some of his work-people, who slept in the mill with him; and in consequence of the indisposition or illness of some of his workmen, had got the assistance of a few military also to sleep with him in the mill; that he had altogether ten, five military, and five not military. That on the Saturday, which was the 11th of April, the night when this affair happened, they themselves had gone to rest soon after twelve o'clock at night; that a quarter of an hour after he had retired to rest he was alarmed by the barking of a large dog, chained within the building for the purpose of giving the alarm; that he immediately got out of bed, and on opening the door of a small apartment in which he slept, he heard a violent breaking of the windows on the ground floor, and at the same time a discharge of musketry or fire-arms at the windows of the ground and upper floors, and he heard likewise a violent hammering at one of the doors of his mill, and the voices of a number of persons at the others; that on one side of this building of his there is a pool of

water, which, I suppose, works the wheels that set the machinery in motion; that upon hearing this, they all flew to their arms; that he had placed a bell upon the top of his building, for the purpose of giving an alarm, in concert with the military stationed at no great distance; and he and his people set that bell ringing, and discharged their muskets through the loop holes of the mill, in an oblique direction with respect to the situation where he was standing; and that the fire was kept up by the people without, and they in return fired from within. They heard the cries of the persons on the outside, encouraging their companions who were engaged in this attack, and then he repeats the language which he heard them utter at that time, "Bang up, my lads—In with you—Are you in, my lads?—Keep close—In with you, lads—Damn them, kill them every one." And then, "Damn that bell, get it," referring to the bell which he was ringing in order to give the alarm. All this shows that there were a considerable number of persons, and that they were encouraging each other in doing that which they were then about, namely, breaking into this mill for the purpose of destroying it. He says that the number of the assailants seemed to be very considerable, but it was in the night, and he was in the building, so that he cannot form a judgment as to their number; that, judging from the number of cartridges they had fired from within, this attack must have lasted as long as twenty minutes; and that when the fire from the people without slackened, he heard the cries of persons who appeared to be wounded from the fire which he had kept up from within, and an attempt made by the people to carry off some of them who had been wounded. He says that they immediately slackened their fire within, as the others slackened their fire without; and upon that the people without appeared to separate themselves, and take different routs, but both routs leading back to Huddersfield. He says a person of the name of Cockell came up, before he himself had opened the door so as to be able to see what was without; and upon this person coming up, probably hearing the alarm of the bell and what was doing, they opened their doors and went out; and he gives an account of what they found on the outside of the house when they went out, that they found two men lying there who had been wounded, and whom the party had not carried off; that these persons were taken to a public-house, to be taken care of. That when daylight came in the morning they examined more particularly the state of the mill, and they found that all the frames and the glass of all the windows on the ground-floor of the mill were broken to pieces, except about nine panes of glass out of three hundred; that the door of the mill had been chopped with a hatchet, and had received many blows with what they call mallets, by which the pannels of the door were broken and chopped to pieces in holes; so that men might nearly put their heads through

hem; that part of the jambstones of the door were likewise broken out by means of the instruments with which they had been hammering and forcing the doors; and the frames of many of the upper windows were broken, and many squares of glass. He describes his building as a stone building; the windows were put into framework, as I understand, in stone; the frames were broken as well as the squares of glass, in some instances the whole window, glass, frame and all, was entirely forced in and broken; there was not one frame, upon the whole of the ground-floor, that was not rendered wholly useless, so as to require it to be made quite anew. So that I collect from his account, that these frames fixed into the stone work were in some instances entirely destroyed and smashed in, and the doors broken in the same way, and the stone jambs in two instances broken off. This is the only evidence given of the injury to the mill; and the question is, whether there was not a beginning to demolish some part of that which formed the fabric of the mill; not the breaking of glass windows (for that would not be a beginning to demolish), but here was a breaking of the frames of the windows; and you will judge of their intent from the number that came, and the manner in which they attacked the mill, which was such, that nothing but a rigorous resistance would have prevented the whole from being demolished.

James Sandys, who was one of Mr. Cartwright's men, says, that the next morning he found some of the mallets and hatchets, which have been produced and laid upon the table; that he found one of the hammers, and a hammer-head, and that he saw other of the weapons, laid upon the table, brought in by the persons who had picked them up on the outside. That is the account of the instruments, as far as they can be given in evidence, which appear to have been used by any of the persons who composed the party making this attack, and you have had an opportunity of seeing the sorts of instruments: some of them appear to be sledge-hammers, and an adze, and another, what they call a mallet, all which are instruments of that force and description as to be capable of breaking a door, and of breaking through the windows. The only other article spoken to by one of Mr. Cartwright's servants, is one which is brought forward at his time, for the purpose of applying it afterwards to evidence produced by others, to fix upon one of the prisoners the having been here. James Wilkinson says, the next morning he found a hat, which he produced, in the water of the mill-dam. So that there was a hat, which had been left there. You will find, when you come to hear the evidence, that particularly applies to the case of one of the prisoners, that one of those, who had attacked his mill, had lost his hat.

These facts having been laid before you, to serve the body of the offence committed, as charged in the indictment, when one considers

the number of persons tumultuously and riotously assembled, the time of night at which they came, the language used, and the manner in which the attack was conducted; it is impossible to doubt that this was a most riotous and tumultuous assembly of ill-disposed persons, and that they came there for the purpose of disturbing the public peace: and you will say, whether they did not begin to demolish and pull down this mill.

The next question will be, whether any of the prisoners now at the bar, were parties engaged in this assembly. In inquiries of this description, in order to constitute the guilt of a person charged, either with the pulling down a house, if the house be entirely demolished, or the beginning to demolish and pull down the house, where the assailants are prevented from carrying their purpose fully into effect, it is not necessary to fix upon the persons who actually fired any of the pieces that did the mischief, or whose hands actually directed any of the mallets or hammers which broke the windows or the doors; but every person who mixes and engages with a tumultuous assembly of this sort, who is present assisting the rest by his countenance and by his voice and encouragement while the fact is committed, is equally guilty, either of actually demolishing or of beginning to demolish (as the case may be), with the man whose hand actually broke the door or began to pull down the building. And therefore it does not become necessary to inquire particularly what each individual prisoner did, but whether he made part of this riotous mob or assembly at Mr. Cartwright's mill at Rawfolds.

In order to show that the prisoners were of the party, they have called on the part of the prosecution, first, a man of the name of William Hall, who is in that branch of the woollen business, called a cropper, and who works at the shop of one John Wood, at Longroyd Bridge near Huddersfield. He says that the other persons, whom he names, one of the name of Sowden, another of the name of Benjamin Walker, another of the name of Varley, and others, worked at this shop; and he proceeds to give an account of the preparations which were made for this attack. He says that one Joshua Dickinson, who was a journeyman cropper, came to their shop on Saturday the 11th of April, and brought some powder and ball. It does not appear that any of these men now at the bar, were then working at the shop. Hall says, that Dickinson brought near a pint of powder, and a little bag of balls, and two or three cartridges, not more; that in consequence of the directions which were given, he (William Hall) among the rest, went that night into sir George Armytage's fields, which appear to have been the place of meeting; that he (Hall) went with Smith and Dyson; that as they went along they overtook George Brook, of Lockwood; that when they got to sir George Armytage's fields, it was about ten o'clock at night; that they found there about



two or three score people assembled together; that they stayed there good part of an hour, that by that time a number of people who had been got together amounted to a good deal above a hundred, and that they then began to be called over and mustered, not by names (names might have been dangerous for every body would hear them), but by numbers, each man having a particular number appropriated, to which he was to answer; that he himself was No. 7, and answered to that number; that there were different companies, a musket company, a pistol company, and a hatchet company; that Mellor and Thorpe (who were convicted upon a former indictment, and who appear to have been the leaders) formed the men into a line; that the company of musket-men were formed in line, two deep; and then they ordered the witness Hall, and a man of the name of George Rigge, to go last, that is in the rear of all the persons, and to drive the people up, and to see that none of them went back. That they accordingly marched from the fields of sir George Armitage towards the mill of Mr. Cartwright, at Rawfolds, over a moor called Heartshead Moor, the mill of Mr. Cartwright being about three miles from these fields of sir George Armitage; and he describes this particular spot in the fields of sir George Armitage as being a place where there was what they call a dumb steeple (an obelisk, or something of that kind); he further says, that these other people, who had neither muskets nor pistols, had some of them mallets, and some of them hatchets, and some had nothing at all; that as they went along, many of them got sticks or stakes, by way of arming themselves; that they were stopped before they got to the mill, and were formed into lines thirteen abreast; that Mellor formed his company, of musket-men, and he thinks Thorpe belonged to the next company, the pistol-men.

Then he gives an account of the names of those persons whom he recollects to have seen while they were in the fields of sir George Armitage, and before they marched to Hartshead Moor, near the mill of Mr. Cartwright. He says that he there saw James Haigh, one of the prisoners, Jonathan Dean the prisoner, standing next to him; John Ogden, James Brook, and John Brook; but that he did not see Thomas Brook there. He says that he saw John Walker there, and he saw John Hirst there; but John Hirst he did not afterwards see at the mill. Then he proceeds to state, that when they had been formed into a line, they went on to the mill; that there was a deal of firing, and knocking with their mallets and hatchets at the mill; and that at one time Mellor, who appears to have been their leader, cried out, that the door was opened; and some of them cried out, "Fire at the bell," for the purpose of shoeing away the bell (or, more likely, the rope to the bell); that he heard one of them say that there was a man shot; that he himself fired twice into the mill, and that there was firing from the mill and into

the mill, and that that firing continued nearly twenty minutes. He says the door in front was cut through, but it was never opened. You recollect the account Mr. Cartwright gave, was, that the door was never burst open, though the pannells were broken so as to admit a man's head. He further says, that they all afterwards got away as fast as they could, in all directions; that he himself went through the beck or stream from the mill-pond, and made for High Town, and that the reason he went to High Town, was, that he met with the prisoner Hirst, whom he had seen at the fields of sir George Armitage before they went to the moor, and whom he saw afterwards when they were forming near the mill, and that he went homewards with him towards High Town, where Hirst was going; that he did not himself go home that night, but went back to sir George Armitage's fields. He then states, that about a fortnight after this business had taken place, Thomas Brook brought a hat to the shop of John Wood, and told the witness to get it to where it belonged if he could; and that Mellor would know to whom it belonged. This will not be intelligible, without attending in the first place to what was proved by the people belonging to Mr. Cartwright's mill; that there was a hat found in the pool of the mill, so that some one person who was there had lost a hat. You will find in the course of the evidence, that a person in going home, called to borrow a hat, and had a hat lent to him; and that a fortnight after, a hat was brought to this shop of Mr. Wood, where the people worked, and that Hall was desired to get it to the place where it belonged, to return that hat, which they had found a woman kind enough to lend them in their return from the mill. He also says that Mellor, when Thomas Brook gave him that direction, referred him to the House of Samuel Naylor, where the man had called and borrowed the hat in his return.

On his cross-examination, Hall says that that night at ten o'clock he could see tolerably well, that it was not very dark, not so dark but he could know a man when he was near him, and that he saw the men when they were standing about in that field, that they occupied a very large space, a larger space than this court. This is the evidence of William Hall, who (it is not necessary to observe to you) was as much implicated in this mischief, as any one of the persons standing at the bar. He is not therefore a person standing in that upright situation, that you can receive his evidence without considerable distrust and caution; and therefore you will examine and see, whether, from the other facts proved in the cause, and the testimony of other witnesses, these facts or any of them are proved by other evidence, so as to convince you that, bad as he is, yet in this respect he speaks the truth. His evidence is to be left to your consideration, but, from the account of his being engaged in this transaction; he does not show himself in

that light, that you can look at his evidence without caution. You will see how the other evidence in the cause falls in with his, and if you believe that he is telling the truth to you upon this transaction, he is a witness upon whose testimony you will rely.

The next witness called is Joseph Drake, who is a cloth-dresser, and worked at John Drake's. He says, that he likewise was at Mr. Cartwright's mill on Saturday night the 11th of April, and that he went there with the prisoners John Walker and Jonathan Dean; that they went together from Dean's house; that he had known them both some time; that they set out at ten o'clock at night to go to sir George Armitage's fields, which was the place they were appointed to meet at; that, as they were going, they overtook several people who were going the same way, but none of the prisoners were among those whom they overtook; that when they were all assembled together in the fields of sir George Armitage, the number might amount from 130 to 150 persons; that in these fields of sir George Armitage they were mustered into companies by numbers, and were placed two by two; that he company to which he (Drake) belonged, was the pistol company, a company where the men's arms were pistols; how many companies here were he does not know, but there were companies both of muskets and of pistols, and a company of men they called hatchet men; that they proceeded, two by two, to Cartwright's mill; that sixty yards before they arrived at the mill they halted, and he did not go nearer than about sixty yards from the mill; that there were a good many stopped behind he main body, which proceeded on to the mill; that he gave his pistol up before he halted (he does not tell us what he did there, or for what purpose they halted there); that a good many of them proceeded on to the mill; that he heard a loud firing, and that it continued from a quarter of an hour to twenty minutes; that he remained within the distance of sixty yards of the mill during the whole time this was going on; that a good many had proceeded to the mill, he cannot say how many.

Then he gives an account of those persons among the prisoners at the bar, whom he knows to have been there. He says Jonathan Dean was there, and had a hammer with him; John Walker was there, and he had a pistol, and a smock frock on. He says that he does not know James Haigh; that he was solicited to go there by Walker; that he himself did not go to Walker after the attack, but that he saw the prisoner Thomas Brook somewhere near High Town, which was the place to which many of them went in their way home after the attack; that at that time he did not know him, and that that night was the first time he had seen him; that when he saw him near High Town, he was without his hat, and his clothes were very wet, and he thinks he said he had been in the dam; that Mellor was with Thomas Brook at that time; that at High

Town they stopped at the house of one Samuel Naylor, where a hat was borrowed, by George Mellor, of a woman, for Thomas Brook; that Thomas Brook went home in that hat. This is the evidence I alluded to, when I stated to you, that evidence would afterwards be given, confirmatory of the circumstance of the hat having been found; so that it should appear that Thomas Brook was the person who had been in the water, and had lost his hat, and that he called with Mellor and this witness, and borrowed a hat, with which he went home; and it was to this house that Mellor afterwards desired the former witness to contrive the means of getting this hat back again. He then describes them as calling at another place, called Clifton, and that Mellor and Brook called for something to eat; it was a private house, and they asked for some muffin and water, which were given to them by a woman out of a window. Afterwards, you will recollect, that both the woman, at whose house they called at High Town, to borrow the hat, and the woman at whose house they called at Clifton, to get some bread and some water; are called to prove that persons whom they did not know called, and that they supplied them, the one with a hat, and the other with some muffin-bread and some water, out of the window. This witness says that he met with John Ogden at High Town after the attack was over; that he then had a pistol with him, and said he had been at the attack of Mr. Cartwright's mill; that they went together to a place which he calls Cawcliff, where they parted; and that he knows him well, and has seen him often between that time and this.

They next call a man of the name of Benjamin Walker, who says that he was one of the party that went to Rawfolds mill on the night of the attack, with Thomas Smith and Thorpe; that he saw none of the prisoners in sir George Armitage's fields, nor till he got to the mill, when they were called over, and he answered to No. 13; that they were formed in sir George Armitage's fields; that they then went into a close a little way before they got to the mill; that he himself had a gun, and was in the first company, which Mellor led; that that company was chiefly armed with guns; that in the place where they halted just before they got to the mill, he saw the prisoner Jonathan Dean, and he took particular notice of him, because he gave him a sip of rum before they halted, after they had left sir George Armitage's fields, and just before they came up to the mill; that he does not know whether Dean had a hammer or not; that after having so halted, they went up to the mill; that when they got up to the mill, there was firing on both sides; that he fired; that he saw a man of the name of Booth there, wounded, who is since dead; that when he got home he went into Jonathan Dean's house, that Dean was then in bed, and his hands were bleeding; and he said he had got

sudly hurt, and that he had been shot in his finger. He says the persons, with whom he went home from the mill that night were, George Mellor, Joseph Drake, Thomas Brook, and another chap from Cawcliff, whose name he did not know (this answers Drake's account of Ogden); that they stopped a little while as they went along, and got a hat for Thomas Brook (this accords with the account likewise given by the former witness); that Thomas Brook told them that he had lost his own in the mill-goit, that he had fallen into the mill-goit, and his clothes were very wet. The fact that somebody's hat was in the mill-goit is clear by the evidence of the servants of Mr. Cartwright; and this man as well as the other, speaks to Thomas Brook afterwards having his clothes wet, and calling at the house of Naylor for the purpose of getting a hat for him. This witness further says, that in going from sir George Armytage's fields to the place where they halted before they got up to the mill, he saw another of the prisoners, John Walker, who had then a pistol with him, but he never saw him afterwards; that while they were in sir George Armytage's fields, he saw also the prisoner James Haigh there, and he thinks he was armed with a mall; that he never saw Haigh any part of the time but that; (but, from the evidence which was given afterwards, it appears as if there was no doubt of his being somewhere else, as well as in these fields; he says they stopped at Clifton, and got some bread and some water, it was what they called muffin-bread, which was given them by a woman out of a window; that he himself had both a gun and a pistol, and he gave the gun to a man of the name of Varley; that he had on a mask, and some of the others had masks on, which they were directed to burn when the attack was over.

This is the evidence of these three persons, who may be considered as all engaged in the very same tumult, riot and felony as the prisoners, and who have given this account of seeing the prisoners there.

The next person called was a man of the name of Sowden, who was another workman in the shop of Mr. Wood, but was not with the party at the mill. He says that he himself was not at the attack of the mill; that he knows Jonathan Dean, John Walker, and the three Brooks. That in the beginning of the following week after this attack upon Rawfolds, which happened on Saturday night, he heard John Walker say in Mr. Wood's shop, that he had a horse pistol in his hand at the time of the attack, and that while looking in at Mr. Cartwright's window, there came a ball and struck the corner of his hat, and that he put his hand through the window with his pistol, and aimed it as well as he could to the point from which the flash of the pistol, the ball from which had hit the corner of his hat, came, and he thought that if his hand went with it, it should go: So that this was at least the boast which John Walker made

the beginning of the week after in this shop, where so many of the persons who had joined in this business were. This witness also says, that John Walker and Jonathan Dean, were the first persons that brought any intimation to the shop, where these people worked, that frame-breaking was going on; that they came to them at their shop (that is the shop where Sowden worked) to request him and his shop-mates to meet, and consider and adopt plans for the destruction of machinery, on the same principle as had been done at Nottingham.

On his cross-examination, he says that he himself never approved of the plan of frame-breaking, that he detested it, that he did not join in any of it; that he did not at that time imagine it would be brought to such a pass as it was afterwards brought to; that he did not discover any of the circumstances he has related to day, until he was asked, and he gives as a reason, because he was of a timid disposition, and was afraid of the consequences to himself; but that the first time he was ever questioned about it (which was the 24th of October) he told every thing he had heard upon the subject, he never having engaged in these transactions, but having heard what had been said in the shops. That is the account given by Sowden. He himself cannot fix upon any one of these persons as having been there, not having been there himself, according to his own account. He only speaks as to John Walker having boasted, the beginning of the next week, of the part he had taken.

The next witness is Mary Brook, who is to substantiate the account which the witnesses have given with respect to her having delivered them the muffin and the water out of the window at Clifton. She says, that on the night of this stir (as it is called) at Rawfolds, after she was in bed, some people came to her door, and asked to buy some bread of her, and that she gave them some muffin-bread and a pitcher of water through the window, and they gave her threepence for it. It is stated by the accomplices that they stopped, and had these articles in this way.

Then Sarah Naylor, who lives in High Town, through which some of these men went in their way home, states, that she remembers the night of Mr. Cartwright's mill being attacked; that in the course of that night, some persons, whom she did not know, called at her house, and asked her to lend them a man's hat, that she saw only one person that asked for it, and she lent it; and that not long after, she cannot particularly speak to the time, it was brought back again.

Richard Tatterson, and the two or three next witnesses, are called to prove circumstances with respect to the prisoner Haigh, for the purpose of shewing that Haigh was at Cartwright's, and that he was one of the persons who were wounded there and carried off. Tatterson says that he practises surgery a little, and lives at Lepton, nearly four miles and a half from Huddersfield. That on Sunday

the 12th of April, which was the day after the attack on this mill, a person came to his house, whom at that time he did not know, but whom he since knows, from what he saw of him on a subsequent day, to be the prisoner Haigh. That he came to him on the Sunday, and was with him again on the Tuesday, and that he dressed his wound; that he saw him again when he was at Mr. Radcliffe the magistrate's, and that he then knew him to be Haigh; that the time at which he came to him on the Sunday was four o'clock in the afternoon, that he said he wanted his wound dressed; that the wound was at the back of the right shoulder; that he examined it, it was an inch and a half deep; it was an open wound, from the upper part of the arm, as he described it, down to the lower part of the arm, cut open the whole way; that there was nothing driven into it or out of it, as he saw, either way, but there was a little bit of lint at the upper edge, and it was driven sideways; it was more wide than it was deep, it was a largeth wound both in depth and width; that Haigh told him he came from Dalton, and that he had done it against a stone. The witness says that he said nothing to Haigh, but only dressed the wound; that it appeared to him to be a bruise, as if it had been done by a fall against a stone; it was fresh and bleeding, and the arm was bloody; that he sewed it up at each end and in the middle, and gave him some salve to dress it with, and he saw him again on the Tuesday; and that is all that he knows about it.

Joseph Culpin, who lives at a lone house at a place called Peniston Green, at the distance of fourteen miles from Huddersfield (Tatterson's being four miles and a half) says, that Dalton may be twelve miles distant from Peniston Green; that a master cloth-dresser, a relation of his, of the name of Ardron, who lives at Dalton, came with another person to this lone house where the witness Culpin lives, at Peniston Green, on the 15th of April, four days after the night of the attack, at twelve or one o'clock at night; that he asked them what they came for, and Ardron said, to smoke a pipe; that his wife knew Ardron's voice, and therefore desired him to open the door, which he did, and let them in; that he had no fire at that time; that Ardron asked him to let them stay there till day-light, and said the man that had come with him had got a hurt; that he did not then know Ardron's companion, but he now knows it is the prisoner Haigh, who appeared to be lame about the shoulder; that they had but one bed in the house; that after Ardron and his companion had been in a little while, the witness and his wife got up, and gave them the preference of lying down in their bed, and they themselves stayed up till next morning; that they then all breakfasted together, and then the witness Culpin and Ardron went out together, leaving Haigh at this lone house at Peniston with Culpin's wife, to stop there till Ardron came back; that Ardron and the witness went together to a

place called Unshelt, and from that to Ardron's mother's at Willey Bridge, and afterwards they came back again; that Haigh went from their house to the house of Ardron's mother, at Willey Bridge, the afternoon of the same day; that Haigh was a man who worked with Ardron, Ardron being his master. The witness then describes the distance from his house to Ardron's mother's house to be about a mile, and from his house to Ardron's twelve miles. So that according to the account he gives, and particularly when you come to compare it with the evidence of the constable afterwards, it appears that Haigh came the very next day to Tatterson's house to have this wound dressed, and that afterwards he was brought to Peniston, and taken from place to place, evidently for the purpose of concealment; for no account is given by evidence of what other could be the reason of his master carrying him in this way to a lone house on Peniston Green, getting him put to bed there, and then arranging for him to go to his mother's in another place.

Mr. Thomas Atkinson, who acted as a constable on this occasion, says that, having a warrant to apprehend the prisoner Haigh on the 23rd of April, he went on that day to his house at Dalton, but did not find him there; that he was not there himself, nor his wife; that he found they had been brewing, and that the beer was in the brewing vessels, just in the way in which it had been left, without ever having been turned at the time when, in the regular order and process, it should have been turned. He pursued him from thence to Tatterson's, where he had got scent of this man having been to be dressed; not finding him there, he then went to Peniston Green; and not finding him there, he then went to Mrs. Ardron's at Willey Bridge, and thence to Wragby, and thence to Methley, where at last he found him on the evening of the 23rd; that was twelve days after the night when the attack had been made; that this is altogether a distance, by the shortest road, of nineteen miles from Dalton; but going round in the way in which Haigh is proved to have gone, it is much farther than that; and that at the time he found him at his brother-in-law's, he was wounded in the shoulder. So that the first object of this evidence is to show, that in the situation in which Haigh was, with a wound in his shoulder, which had made him lame, he had gone away from his own house, taking this long circuit, and moving about from place to place; when, for a man who wanted rest for the sake of his wound, it would have been more convenient to stay at his own house, if there was not a strong reason against it, namely, the apprehension of his being detected. The witness says that they took Haigh before a magistrate, and he was there examined, on the 24th; that the arm was examined; that something was said about this shirt, upon which the shirt he then had on was taken off (and that shirt you, gentlemen, have seen), and that another was given him.

He adds, that the shirt was examined by a military gentleman who was present, Major Gordon, and that he in the prisoner's presence said it was a musket-ball that had made that hole in the prisoner's shirt, and that the prisoner made no observation upon it. That was, however, mere opinion, and it was evidence only because it was stated in the presence of the prisoner, and which he might have answered by explaining how it was that it had been occasioned.

Michael Bentley says, that he lives at Methley; that he saw the prisoner Haigh at his house the day before he was taken up, when he came to be shaved; that when he saw him there and shaved him, he was lame in the shoulder, he thinks it was the left shoulder. This is clearly a mistake, for there is no doubt that the wound was in the right shoulder.

Fanny Milnes is called to speak respecting the prisoner James Brook. She says she lived next door to him at Lockwood, and that the Sunday after this attack, she saw a great deal of whispering at his house; that on that morning she saw James Brook, who, according to her account, from the motion of his hand appeared to be telling some sorrowful tale; that she did not hear what he said; that there were plenty of men, who belonged to the cloth-dressers, were coming to his house, and that she, living next door, heard James Brook say, that of all the dismal diins any body ever heard, that was the most dismallest, and that you might hear it half a mile, and he had rather be clammed to death than be in such a stir again. What he was alluding to, she does not know; this was all that she overheard, and she says, it was between ten and eleven o'clock. Upon her cross-examination, she says that her husband had taken up this James Brook upon some former occasion, and had taken him before a magistrate without a warrant; that Brook was detained during the night and then discharged; and that Brook then brought an action against him for that assault and false imprisonment, and that he recovered against her husband a verdict with some considerable damages. Then she is asked, whether she ever said that on that account she would be even with him, or with the family of the Brooks, or any thing of that kind; and she denies ever having used those expressions. Her evidence only shows that her husband, at least, had something as a matter of complaint against Brook, and from her evidence it appeared that she thought that Brook had recovered a verdict for damages against her husband which he ought not, and therefore she might not owe him any very good will.

The last piece of evidence produced on the part of the prosecution, is the examination of the prisoner of the name of Hirst before Mr. Scott, on the 2nd of November last. When this charge was made against him, and he was asked what he had to say, he said, "We were ordered to meet at the obelisk in sir George

Armstrong's fields; when we got there, we found a great many men, who said that if we did not go with them they would shoot us; so we went to Rawfolds, and we saw some firing, to be sure. I came home as far as Hartshead with William Hall." That is the only account he gives; he does not deny his meeting in sir George Armstrong's fields with the rest, and his going on, but he attributes his going on from sir George Armstrong's, to their threatening that they would shoot him if he did not; but he does not state any reason why he met the rest at sir George Armstrong's before they proceeded to the attack of this mill.

This is all the evidence on the part of the prosecution, and it shortly consists of this; of the evidence of those persons who stood in the situation of accomplices, who were there themselves, and who speak of the prisoners at the bar being there also in different parts of the transaction, and likewise give an account of the different circumstances which took place in going to this mill, while there, and during the time when they were going home; and of the testimony of different witnesses from various places, as to these separate and distinct circumstances, to confirm the accomplices in those parts of the case to which they have alluded. They have likewise called to you that witness of the name of Sowden, who was himself no party in any of these transactions, but was working in the same shop where the others worked, and who speaks of course to nothing that took place that night, he not having been with any one of them, but gives evidence as to one of the prisoners, Walker, having, the beginning of the week after, boasted of the part he had taken in the attack of this mill. With respect to Haigh, there is all that evidence, none of which is at all explained on his part, of his having, on the very next day, been dressed for a wound in the shoulder; the account that he gave, being, that it was cut by a stone in consequence of a fall which he had had; and then as to the manner in which he was treated, by being carried about from place to place, till he was apprehended where the constable afterwards found him. And then you have, as to particular prisoners, that which has been proved, and the admission, in the examination of Hirst himself, that he was there, and that he went from the mill as far as Hartshead with William Hall; and so far by his own acknowledgment he confirms the account which William Hall, who was one of the accomplices examined before you, gave, that this man Hirst was one of the persons who went home in company with him.

On the part of the prisoners, they have gone into a considerable length of evidence, which, as there was so many different prisoners, it was of course to be expected they should go into. The first evidence gone into, was with respect to some of the prisoners at the bar, to show that this account, as far as it respects them, must be false or incorrect, because they were

not there at the time. You observe, according to the evidence on the part of the crown, that, on the evening when this attack was made, they were appointed to meet at ten o'clock at night, in sir George Armitage's fields; that they stayed there some time, and afterwards marched up; and, according to the account given by Mr. Cartwright as to the time when it happened, it must have been a quarter, or thereabouts, after twelve, when the attack on the mill began, because he fixes the time when he went to bed to be soon after twelve, and says that in a quarter of an hour the attack began by their firing their pieces at the mill, and by knocking at the windows. The evidence goes to prove that three of these prisoners were elsewhere.

The first that they begin with, is James Brook. For him there is called a man of the name of Thomas Ellis, who says that he is a wool-stapler, that he lives at Lockwood; that he knows the prisoner James Brook, who lived with his father at Lockwood; and that on the Saturday when Mr. Cartwright's mill was attacked, he (Thomas Ellis) had stayed at Huddersfield till about nine o'clock in the evening; that after that he had stopped at Spring Gardens coffee-house, in his way home to Lockwood, till half past ten; that he then went towards home about a quarter of a mile; that in going home he saw James Brook opposite his house, going the same way that he (Ellis) was going, and that it was then a quarter before twelve at night. So that he would make it a quarter before twelve at night, that he, having spent the evening as late as past nine at Huddersfield, and afterwards at Spring Gardens, overtook James Brook near his own house at Lockwood. It is perfectly clear, from the distance and the time, that if James Brook was at Lockwood at a quarter before twelve that night, he could not have been at Mr. Cartwright's mill. He says there were several other people on the road at the time that he saw him. He is then asked as to character; and he says he believes there is not a man in Lockwood, nor all round, bears a better character than all the Brooks do. There are two other Brooks as well as James Brook, prisoners upon his occasion.

The next witness upon the same facts is George Armitage, who lives at Lockwood. He says that on that same evening he was at Huddersfield, and returned home at nearly twelve o'clock at night, and that he saw the last witness, Thomas Ellis, and afterwards went from Thomas Ellis's in consequence of something Thomas Ellis had said to him, to James Brook's father's house, and that he there found James Brook the prisoner sitting by the fire, and that the father called to them while they were talking by the fire; that the next morning he heard what had been done at Rawolds-mill. Upon his cross-examination, he says, that he is a blacksmith; that he was a witness upon the former case of George Miller; that he saw the clock at the time he was at

Ellis's and that it was somewhere near five minutes after twelve; that he never was applied to upon this subject, to recollect the transaction, or to speak to it, till he was subpoenaed. The same inquiry has been made of several of the witnesses, who speak to a particular hour on that night, when they saw particular persons. And they all of them state, that the next day they heard what had happened at Cartwright's mill; but still the next day there was no charge made against any of these prisoners, as having been engaged in any thing at Cartwright's mill, and therefore they were not asked at the time, whether they recollected this or that man being at home. It does not appear that any of them, except Haigh, were charged with this offence till long afterwards; and it is an observation made with regard to the accuracy with which they speak to having seen particular persons on that evening, that they may have been in the habit of seeing them other evenings.

Hannah Tweddle is then called, for the purpose of taking off the effect of (what had not perhaps a great deal) the evidence of the last witness called on the part of the prosecution, Fanny Milnes, who spoke to having heard a declamation made by James Brook, who lived next door to her, where she first saw by his action that he was telling a dismal story, and afterwards heard him say that it was one of the dismallest dings he ever had heard in his life. Hannah Tweddle is called to prove some ill will on the part of Fanny Milnes towards Brook. She says, that she lived next door to Brook; that she knows Fanny Milnes; that she heard her say one day, that she was determined to see some of the Brooks distressed before they came from this place, and that she hoped to do it. She was falling out at that time with a young man at her door, and in the course of the altercation with this young man, she made use of these expressions. She says, that this might be a few weeks back, and that she said, some of them must be hanged before they left this place. That merely applies to the question, what reliance may be fairly placed upon the account Fanny Milnes has given.

The next witnesses they called were with respect to the prisoner Thomas Brook, in order to shew that he could not have been at the mill that night. John Ellis, a cloth-dresser at Lockwood, says, that he is acquainted with Thomas Brook, that he worked for Brook, that he did so on the day of the attack on Rawolds-mill; that they were very busy at work on the evening of that day, and that he and Thomas Elam and Jonathan Vickerman were working together; that Thomas Brook did not work at the shear-board where they were working; that he saw Thomas Brook come in that evening; that they had worked till he came to them to ask them whether they knew what time in the evening it was they were working to, and that he told them it was near twelve o'clock; that upon that they im-

mediately laid away, and went into the house, and drew their wages; that there was no scarcity of work; that he cannot remember the names of the persons coming in during the time they were at work, but that they were at work till near twelve that night; that they all received their wages, namely, Elam, Vickerman, and himself, from Thomas Brook that night, soon after twelve o'clock, after he had called them from their work, asking them, if they knew how late it was, and that he gave each of them a pound note. Then he is asked, what passed when this money was paid; in what particular part of the room it was paid, and at what table; and describes particularly that it was on the hurling table, that stands near the door as you go in on the left-hand side, and that Brook put a pound note into each man's hand at the time they heard the clock strike twelve. At first he said the children were in the room, and then that he did not see the children; that one of them, which he says was badly, was on the wife's lap, and the others were in bed; that after he had so received this money, they went a little way together, that they and he then turned different ways. He is asked whether he could remember the time when first his master was taken up. He says he cannot. He says, too, that they were working upon plain cloth, finishing it; he cannot specify the colour. He is asked this, which is material, whether Elam and Vickerman are here, and he says they are both here; but they are not called. Now, to be sure, when he speaks to a transaction of this sort, proving Thomas Brook in his house, and refers himself for confirmation to two other workmen, who must have seen every thing that he saw, and who, if in speaking to these particulars he has spoken truth, would agree with him in these particulars; it is obvious to remark, that unless it is pretty well known that they would not speak to those particulars, there appears no reason why they should not be called.

The next witness is as to John Walker. Richard Lee is called to prove him elsewhere; he says that he knows John Walker of Longroyd very well, that he has lived with him nearly six years at bed and board at his house; that on this Saturday night of the attack on the mill, he himself was at home at John Walker's house; that he went home there at eight or nine in the evening, and stayed at home the whole of the night after; that Walker was not at home when first the witness went home, but that he came in between ten and eleven o'clock; that, after he came in, he went out for a little time with Joseph Walker to fetch two barrows of coals from Hannah Blakey's, and that at eleven o'clock, or soon afterwards, John Walker shaved Joseph Walker, and then Joseph Walker went to his own home, and he saw no more of him. He says that John Walker slept in the house that night; that the witness slept in the room ever since; that John Walker always slept in the room below with

his wife, and that he is sure he did not go out after that time, for that he heard him in bed. If his account was a true one, it is not material to inquire whether he went out afterwards, for it is impossible he should have been at Rawfolds after that period: the question is, whether his account is a true one. He says that after eleven o'clock he shaved this Joseph Walker, and that afterwards Joseph went away, and the prisoner John Walker went to bed with his wife, and he (Lee) up stairs; that Joseph Walker had been waiting for John Walker's coming in; that Joseph Walker had come in at ten, and had stayed till John Walker came in, and that nobody but he and Joseph Walker came in; that, as soon as John Walker came in, his wife told him they wanted coals, and that John Walker asked Joseph to go and help him fetch them, and that they accordingly went, and nothing was said about money to pay for them. He also says, that he never heard of John Walker being taken up till October.

Then Joseph Walker is called. He is the brother-in-law of John Walker, having married the wife's sister. He says that he was at the prisoner's house on the night of the attack on Cartwright's mill; that he went there to be shaved about ten o'clock; and that when he arrived, John Walker was at home. The other witness, Lee, had said, that Joseph Walker had come in, and waited with him, and with John Walker's wife, till John came home. Joseph Walker says, that he himself went to John Walker's house to be shaved about ten o'clock, and that, when he got there, John Walker was at home; that he asked him to assist him in getting a few coals; that they fetched two barrows from Hannah Blakey's; that after they had fetched them, the prisoner shaved him, and that then he left his house at twenty minutes before twelve, and went back to Huddersfield; that he heard the town clock strike just before he got home, just as he entered the town; that Lee, the last witness, was in the house when he came in. He is particularly asked, how John Walker was engaged when he went in; and he says, John Walker was sitting in his chair, honing his razors at the time he went in, at ten o'clock at night. To be sure, he differs materially in his recollection from Lee, for Lee says that Joseph Walker had come in and had waited for John Walker's coming in, for that John Walker was not at home; whereas, according to Joseph Walker's account, he found John Walker sitting in a chair, honing or whetting his razors, when he got in.

Hannah Blakey, the next witness, says, that she deals in coals; that she knows John Walker; that she remembers the affair at Rawfolds; that on that evening the prisoner came about eleven in the evening; that she knows it was the night Mr. Cartwright's mill was attacked, because they came so late, from having heard early the next morning what had happened. Why she should know it from having heard the next morning what had hap-

ened, unless this prisoner was connected with what had happened, one does not know; for there was no charge against this man at that time, as having been at the attack on the mill. She says he did not pay for the coals, and she put them down upon a slate; that she has always kept it in her recollection that it was this night. She was asked, what was the other time before that time, that the prisoner had been supplied with coals; and she says, he might be supplied every week, but it depended upon the season or the time of the year, but she cannot recollect any other time that he had been supplied, having kept no other night in her recollection but this particular night, which she kept in consequence of having heard of the attack on Cartwright's mill the next morning.

That is all the evidence given by the witnesses for the prisoners, for the purpose of showing that the account of the witnesses for the prosecution could not be true, because they were either at home or anywhere else; and it is applicable to James Brook, Thomas Brook, and John Walker.

They then call a number of witnesses as to the character of the different prisoners.

They call first, as to the character of James Haigh, the man who had the wound in the shoulder, Mr. Mills a cloth-dresser, who speaks of his having been apprentice with him, and that he has known him ever since, and he has always maintained a good character.

Joshua Wood, a cloth manufacturer, states, that he has known him a good while, and he has maintained a good character. As to Thos. Brook, he speaks to his character being good.

As to Jonathan Dean, they have called Joseph Brook, who states, that he has known him four years and upwards, that he has worked with him, that he is a cloth-finisher, and that his general character, since he has known him, has been a very good one.

James Garside says, that he is a cloth-dresser; that he has known the prisoner Dean six or seven years, and that his character at Longroyd Bridge, and in that neighbourhood, has been that of an honest and industrious man.

Joshua Priestly has known Dean a dozen years, and during that time his general character has been that of a peaceable industrious man.

Joseph Riley, a tailor, has known Dean ever since he was a boy, and his general character has been very good. Then he speaks of a circumstance which seems to have nothing to do with this case; that when he was a little boy he had met with a wound in his head from the unkindness of his step-father, and that he had fits. But it cannot be pursued so as to show that he was not in a situation to know what he did, and to discern right from wrong; and therefore it appears to have nothing to do with the present inquiry.

Richard Beaumont says, that he is a clothier; that he knows the prisoner Ogden, who has

worked for him two years last July; that he has known him five years, and that he always maintained an honest, industrious, and peaceable, character.

Abel Armitage, who is a clothier, says, that he has known Ogden five or six years, that he was always a very steady hard-working man, that he seemed very industrious, and that he has a wife and two children.

William Haigh speaks as to all the Brooks. He says he has known the three Brooks from their youth, and that they have borne a good honest character; that they are as honest people as any in the neighbourhood.

James Garside also says that he knows the three Brooks very well, and has known them seven or eight years, and that during that time, they have borne a very good character as honest industrious men.

Joshua Wood states, that he has known Thomas Brook for many years, and he gives him a good character.

As to John Walker, William Haigh states, that he has known him for some years back, and that his general character has been that of a laborious honest man, for any thing he knows.

Then as to the last prisoner, Hirst, there are two witnesses, one of the name of Holdfield, and one of the name of Shipley; they have known him, one of them ten or twelve years, and the other during the whole of his life; and they speak of his having borne a good character during the whole of his life.

This is the evidence which has been given as to character. And with respect to the effect of character, the proper and the only proper influence it can have in inquiries into the truth or falsehood of a charge brought against prisoners, is this; that if the evidence leaves it a matter of fair and reasonable doubt whether a party is guilty or not; in common cases, if you prove that a prisoner up to that time has always maintained a good character, it will apply and balance in his favour; but if the evidence of guilt is satisfactory to the minds of a jury, evidence of previous good character cannot and ought not to have any avail.

The question in the present case will be, how far you are satisfied that the evidence which has been laid before you upon the part of the prosecution, has made out that, which they are bound for the prosecution to make out; that these several prisoners at the bar, or any of them, have been guilty of that crime which is laid to their charge; namely, beginning to demolish or pull down this mill of Mr. Cartwright's at the time stated in the indictment. I stated to you in the outset, how far all were implicated, who joined in that riotous meeting with that intent; and the question is, whether the prisoners at the bar are satisfactorily proved to have been of that number. To prove that they were so, there is the evidence of three persons standing in the situation of accomplices, standing therefore in the situation of persons, whose evidence you will receive



with caution, with a degree of scrupulousness, and whom you will expect to be confirmed by persons whose testimony is less suspicious, before you give credit to the account they lay before you. You will judge how far they have or have not been supported by the other witnesses who have been called. It is not necessary, that in the whole of the account they give, they should be supported by other testimony; but if you find, from the support they receive from other witnesses, that they are telling truth in some particulars, you will, of course be justified in believing that they are telling you truth in the whole of their narration. On the contrary, if you find that they are speaking falsely in some particulars, you will then distrust their testimony in the whole. Now the present case certainly does not rest upon the testimony of one, nor indeed of all taken together; but the facts which they have spoken to are, in many instances which I have detailed to you, and which I have observed upon as I went along, supported and confirmed by different persons unconnected with them, and who have been drawn from different parts and different places. In addition to that, you have some circumstances applicable to some particular prisoners, which do not depend at all upon that sort of testimony, I mean particularly the situation of the prisoner Haigh the very next day, applying to have a wound in his shoulder dressed, and the way in which he was carried about till the time of his apprehension. With respect to the circumstance of the hat being found in the mill-stream, it is not proved whose hat it was by any of the people who found it; but it appears, not only by the testimony of the accomplice, who said he went home with Thomas Brook, that he was wet, and was without a hat, but also from the testimony of Naylor, that that same night, several people called and borrowed a hat, which hat was afterwards returned.

You will put all these circumstances together, and after the attention you have paid to this case, it will be for you to say, whether or not you are satisfied that these prisoners were of that party who began to demolish this mill; and if you are satisfied that the evidence fixes this crime upon any of the prisoners, as with respect to such against whom you think it defective, you will acquit them; as to the others, you will convict them; and if you think it does not apply to any of them you will acquit them all. If you find the account of the accomplices confirmed as to all, which is more indeed than can be expected, they must all bear the fate of the same verdict. You will consider the case, and form any discrimination which in your judgment you think the case deserves.

The jury retired at six o'clock, and returned at seven, finding James Haigh, Jonathan Dean, John Ogden, Thomas Brook, and John Walker **GUILTY**.

James Brook, John Brook, and John Hirst—**NOT GUILTY**.

Monday, 11th January, 1813.

THE KING  
against

JOSEPH BROOK.

The prisoner was arraigned, and pleaded Not Guilty, to an Indictment for Burglary, at the house of Benjamin Strickland, at Kirk Heaton, on the 4th of October.

[The Indictment was opened by  
Mr. Richardson.]

Mr. Park.—May it please your Lordships; Gentlemen of the Jury, This indictment is for an offence, which, unfortunately, is not an unfrequent subject of trial at the ordinary assizes; I mean the crime of burglary. But it is in this instance one of those crimes which has been committed with similar circumstances of outrage and violence, as some you have heard during the present session. The 4th of October was the day on which this robbery was committed. The nominal prosecutor, Benjamin Strickland, is a farmer at Kirk Heaton in this county. The prisoner is a tailor living at Raistrick, also in this county, about four miles from Strickland. It does not appear that he had any knowledge of the prosecutor long before; but there is a fact which may probably account for this outrage at the house of Strickland, that a few days previous, a nephew of Strickland's of the name of William Armitage, met the prisoner and a person of the name of Holmes. This Holmes was an acquaintance of Armitage's and of Strickland's; and in the presence of Brook he said to Armitage, "Have you begun for yourself yet?" "Yes," says he, "I have." "Why then your uncle Strickland must give you some money." The young man replied, "I do not believe my uncle as any to spare." "Oh," says Holmes, "he has plenty to spare, if he will only bring it out." The prisoner was present at that conversation, and made some foolish inquiries about nutting in a wood, and so on, to turn it off; and there they parted.

On the fourth of October three persons attacked this house; admittance was demanded with a very loud voice: Strickland got up, and asked what was wanted. Some person without called, "Where is Enoch?" What that term exactly means I cannot state to you; but I understand that one of those large blacksmith's hammers or mallets, which some of you saw on Saturday, bears among the Laddies the name of Enoch. The man who carried it, began beating at the door, upon which Strickland opened it, and a tall man in a top coat, answering the description of the prisoner, said, "We are come for your gun." Strickland said he had not any, for that it was in the gun-room. "Then," said the robber, "We must have your money." Strickland said, "I cannot find it without a light," and he endeavoured to strike a light. The man who had

chanted, said, "We are to have a fight soon, and will endeavour to let you have your money, after it is over." Great imprecations were used to make the old man give up his money. He said, "I really cannot find it without a light;" and he dropped the key of his desk, which was picked up by some of the robbers. After some time he was taken into the room where this desk was, and some person stood over him, and insisted on his finding the money; and for that purpose gave him back the key of the desk. It will appear that two men were standing over him at this time, but we have found only the prisoner on whom suspicion fell. They took out thirty or forty shillings, and then they asked him for his gold. He said he had none. They asked him for his watch, and took his silver watch away from him.

While this was passing, Ann Armitage, the niece of the prosecutor, and the sister of William Armitage, who was sleeping in the house-part, with a view to give an alarm, called out "Jem!" upon which one of the robbers, who was in the same room, in order to intimidate her, struck his sword against the stones, which produced a very vivid flash of light, by which she immediately saw the face of the man. The prosecutor, I believe, cannot speak at all to the person of Brook; but this young woman I shall call before you, and she will swear positively to all the circumstances I have mentioned; besides which, she will swear that the person she saw strike that light was the prisoner Brook, speaking both from what she saw of his face, and from his voice, which she attended to particularly before the magistrate. And, gentlemen, I have another piece of evidence, which will appear, I think, to you and to their lordships, very material. I shall call before you a person of the name of John Naylor, a waggoner, who will state that on Monday the fifth of October (this robbery being committed on the night between the fourth and fifth) as he was going to Kirk-Heaton Woods, with his waggon, he met between Bradley-lane Bar, and Coin Bridge, two men running. Now the prosecutor and his niece will speak to hearing several other voices, though they could discern the features of only one person, and will tell you that during the time the men were in the house, a voice, which is supposed to have been that of Brook, called out, "Is the guard at the door?" and an answer was made from without, that there was a guard there. This waggoner will tell you, that first of all he saw two men running, and that they crossed over the road, as they came near him, so as to interpose the waggon between them and him. It was then becoming daylight, so that he could see them, but he did not speak to them. He had not proceeded two hundred yards, when he met the prisoner Brook, in a dark-coloured top-coat. He will fix him therefore to have been upon that road at the time. Brook was running along the road, as if to overtake the men that had gone before, and when he saw the witness with his

waggon, he halted and walked past. The witness said "Good morrow to you master." Brook made no reply, but turned his face from him, and hung down his head; and having walked past the waggoner, he set off running again towards Raistrick, which was in the opposite direction to Kirk-Heaton. Naylor, I understand, will swear that he has no doubt of Brook being the man. This is the sort of evidence I have to lay before you. It will be for you; under their lordships' direction, to weigh the evidence. What will be the defence, I do not know. I suppose it will be a good deal like the sort of evidence we have had in other cases; but you will have to appreciate the weight that is due to that also.

The evidence for the Crown was then given, and the Prisoner entered into evidence, the whole of which was fully stated by

Mr. Baron Thompson.—Gentlemen of the Jury, This indictment charges the prisoner at the bar, Joseph Brook, with breaking and entering the dwelling-house of Benjamin Strickland, in the night-time, between the hours of two and three, on the 4th of October, and stealing a watch and several pieces of money, the property of Strickland; and also stealing there a pocket-book, and other money to the amount of about fifteen shillings, the property of Ann Armitage his niece, who lived with him.

Benjamin Strickland has given this account of the matter; that he is a farmer and clothier at Kirk-Heaton, that his family consisted of himself, his niece Ann Armitage, and an apprentice lad of about the age of sixteen; that upon the night of this 4th of October they went to bed between ten and eleven, and that in the night he was awakened by the voices of a number of people on the outside of the door, and the cry of "Open the door, open the door!"—he said, "Who is there? What do you want?" he thinks this was between two and three o'clock in the morning; it was the dark of the moon; it was star-light. That he then heard the cry, "Come, come, open the door, open the door!" and there appeared by the noise to be a number at the door; that he asked if it was some soldiers that wanted quarters (for it appears that soldiers were about that time quartered in private houses)? it was answered, "Come, come, open the door!" that he got up and went to the door, and after he had got to the door he wanted them to give some account of themselves, and said, "You ought to give some account of yourselves, before I open the door;" that one of them then called out "Enoch," and they struck a very heavy blow at the door, and by the stroke it appeared to him to have been done with an iron hammer, and the mark upon the door confirmed him in that opinion. He says he had heard of the term Enoch before, and (as he expressed himself) in the present day he understands it to mean a hammer; it is a new

term for a hammer. He then opened the door, for fear they should break it to pieces; and upon its being opened, there entered a large man, a stouter man than himself, with a top-coat on, who said, "We are come for your gun." Two other men entered as he said this. The witness told them he had not a gun. The other said, they must see. The witness said, "I assure you I have not a gun, my gun is at the guard-house;" which he says was the case, for that it had been delivered up to the soldiers. The man said, "Well, then we must have your money." The witness told him that he had not much money by him, and that what he had he could not find without a light. Then one of them said "We are going to have a fight, you shall have it again when the battle is over." He says he began to rake up the fire, to see if he could get a light, but the fire would not blaze; and one of the men said "Why don't you raise a light?" or something to that effect. He said he could not raise a light, but he gave them leave to do it, and one of them tried, but could not succeed; and they said, "Come, find us your keys." He went to find the keys in his breeches pocket, he went into the bed-room, and was followed by two of them from the house-part; when he got hold of his breeches the key dropped upon the floor, and one of them took it up. While he was going for the key, the stout man called out, "Is the house properly guarded?" He did not hear any answer. The same man called out, "No. 12 come in and plunder the house." The key was returned to him, and he then felt something like fire-arms at his breast, but not pointed at him; and the man said, "Open your desk, and find the money." Upon this he opened the desk, which was near his bed, and two persons were in the room with him, and stood beside him. He took nothing himself out of the desk, but the men took out something. The witness told them, the money he had was in a little drawer in his desk, and they would find it there; and he says there was in that drawer somewhere under a pound in silver and copper. Ann Armitage had money in an outer drawer in that desk, and he saw them take that out. After they had taken the money out of the outer drawer, one of them said, "Damn you, where is your gold?" He said, "I have no gold." They said "We know you have." He cannot tell which of them said that, but it was one of the two that came in after the first man entered the house. The stout man at this time was walking about the house-part. The two men said, "If you do not find your gold, you are a dead man;" and there was something of fire-arms, which he warded off with his hands. At that time his niece called out with a loud voice "Jem," which was the name of the apprentice boy. His niece slept in the house-part in which the big man was walking about. A light was struck there, which appeared to be struck with a sword upon the floor. He saw it shine. This was done when the niece called Jem. The

man said, "We will have no Jem here," and he called to the lad Jem not to come down. They continued threatening him for gold, and said, "Damn you where is your watch?" he said, "My watch his here." It was hung by the side of the clock-face, and he took it down and delivered it up. After this the big man called out a second time, "Is the house part properly guarded?" They remained a short time after. The light which he saw was a flash from the striking of the floor, and he saw that flash at two different times. So that you see all the account he gives of this transaction is, his being obliged to open the door in consequence of the attack that was made upon the house, the men coming in, and proceeding to the plunder of that house, in the way which is described; the observing the flash of light twice, as if from some striking of the floor in the house-part, not where the witness was, but where the stout man was. You observe he does not attempt himself to speak either positively, or to his belief, as to who those persons were who so robbed his house; but he proves that the prisoner lived at Raistrick.

Ann Armitage has told you that she is a niece of Strickland; and on the night of the 4th of October, between two and three in the morning, she was in bed in the house-part; that she heard a number of men at the door, who knocked at the door, and called out to open it; that her uncle got up, and opened the door, and three men came in; that she saw them in the house-part where she slept; that her uncle was in the house-part, and the men first demanded his gun, and he said he had none, for that his gun was at the guard-house; that then the men said they must have his money, and her uncle answered that he had not much money; but they demanded what he had, and they went into the room where the uncle slept, first all three of them, afterwards one of them came back into the house-part where she was; that the house was dark, and he came to her bed-feet; that before he came, she called out "Jem," and the man came to her bed-feet, and struck a light, which she describes to have been done by striking upon the stone floor with something like a sword, probably to intimidate her, and it produced a flash; that it gave a light, by which she could see his face. It must have been but a very short period, in which she had an opportunity of seeing his face, for it could be only from the transient opportunity afforded her by a flash being struck upon the floor; the light which was so occasioned must have been momentary. She says that this flash was near his face; that his forehead and his cheeks were blacked over in streaks, but yet she says she saw what kind of face he had, and what kind of a dress, and she describes him as having a great dark-coloured top-coat on, and a dark-coloured handkerchief, and that she could see he was a big man when he struck the light. She says too, that he swore, when she called Jem, that if Jem came he

would blow his brains out. He struck a light only once at her bed-feet; he struck it another time, but that was a good way off in the same room, and she did not see that flash as fair as he did the other one, and she did not then see his person or features; so that the only opportunity she had of seeing either his person, or his dress, or his countenance, was from that single flash given while he was at her bed feet, at which time she undertakes to say, she saw enough of his face, though blacked upon the forehead and the cheeks, to know him again. She says also, that during the time he was in the house she heard him speak many times; but she does not say that it was a voice he was at all acquainted with before that time. When she mentions that money of hers was taken that same night, and she describes it to have been, as the uncle had done, in a drawer in the room where the uncle slept; she had there in silver and copper, 15s., the silver was all in shillings; she had 3s. 6d. in copper, and 1s. 6d. in silver; which silver was in a pocket book. She then says that the person, whom she had seen by the flash, she saw again before Mr. Radcliffe the magistrate, a week and a piece after this, and that she believed him to be the same person that she had seen that night, and the prisoner is the person whom she saw before the magistrate. She believed him then to be the same person, and she believes it now, but further than that, she does not carry her evidence. She says that she heard him speak that night several times, and she heard him speak before the magistrate several times, and that by his voice, and also judging from his appearance, she believes him to have been the same person. On her cross-examination she admits, what you may suppose to have been the case, that she was very much frightened all his time; and she states that she had never that she knows of seen that person before.

They then called John Naylor, who is a waggoner to Mr. Clerk, of North Owsram. He states, that he was going with his master's waggon on the morning of Monday the fifth of October (and he fixes it to be the fifth of October by saying, that he heard that day of Strickland's robbery) for bark into Heaton Hall Wood, which is in Kirk-Heaton; and about four o'clock in the morning he met some persons. He met two of them just at the bottom of Bradley Lane, near Coln Bridge; they were coming in a direction towards him, from Kirk-Heaton; but that road leads to more places than Kirk-Heaton; they were running, they did not come up to him; but crossed the road, and went on the other side of his horses. It was a starlight morning, and the day was just breaking, and he says there was light enough for him to see the men. He afterwards met another person, about two hundred yards further on, coming in a direction as from Kirk-Heaton; he was also running; he had a dark-coloured great coat on; he was a stout clever fellow (as he expresses it). He says that he did not at that time know the man.

The man stopped a little before he came to the witness, and walked past him. The witness spoke to him, and said, "Good morning to you, master;" he made no answer, but turned his head quite from him, and set off running. The three men were going in a direction which would lead towards Raistrick. He afterwards saw the prisoner before Mr. Radcliffe, but he says he will not swear that the prisoner is the man whom he so met running in this direction. The road he met him upon goes to many places. A question was put to him, how he came to know the time of morning, that it was four o'clock, as he had mentioned; and he says, that he had asked at the toll-bar, a short time before he met the men, and he learnt that it was four o'clock. Whether they had a clock at the turnpike-house does not appear, but he speaks to the time only from the information he received at the toll-bar.

William Armitage is called, who is nephew to Strickland, and lives about half a mile from his uncle's. He says that he remembers the time that his uncle was robbed; that the Sunday night before the robbery he overtook one Holmes, as he was going to church in the afternoon; that Holmes had a person with him, whom he did not know at that time, but that he took sufficient notice of him to know that person again, and that the prisoner is the man who was so with Holmes. Holmes lives at Raistrick, about four miles from Kirk-Heaton. He had a conversation with Holmes, in the prisoner's presence, for near a quarter of an hour. Holmes asked him where he lived, and the witness told him he lived with his sister; Holmes asked him how it liked that he did not live with his uncle; the witness told him he did not know; and Holmes told him his uncle should give him some money, now he was out of his apprenticeship; the witness told Holmes that he thought he had little enough for himself at present; Holmes said he had plenty, but he would not bring it out; and this he says the prisoner must have heard; that is his conclusion. Brook asked the witness whether there were any nuts in those woods (they being between two woods, about a quarter of a mile from his uncle's), and whether there was any watch kept over the woods; the witness said there was; Brook asked where the watch lived; the witness told him they lived in Kirk-Heaton; he observed it would be easy to rob the woods (that is of nuts) if the watch lived so far off; the prisoner (as he swears it was) then asked him, whether he knew the road to Bill Jubb's, who keeps a public house about a mile from his uncle's house; the witness shewed him the road to it, and then left him with Holmes. That is the whole of his evidence. He says on cross-examination that he was with his sister at a public house in Huddersfield, before they went to Mr. Radcliffe's about this charge; that the prisoner came in after them; that he knew him to be the same man whom he had met in

company with Holmes the Sunday week before, and never had any doubt that the prisoner was the man.

The prisoner's defence is, that he never was at Strickland's, and never saw the people in his life. He has called three witnesses in his defence, by way of convincing you that he could not be either of those persons who so entered the prosecutor's house, and committed the robbery which he has stated.

In the first place, John Kaye has stated that he is an engineer at Littletown; that in October he lived at Thornhill Bridge, which is about two miles from Raistrick; that on Sunday night the 4th of October he went to the prisoner's house exactly at twelve o'clock; that he went courting to the prisoner's daughter Hannah; that she let him in, and that he stayed there till between five and six in the morning; that the prisoner slept in a parlour adjoining to the house-part; that, upon the door being opened by the daughter, Joseph Brook cried "Is n't it time to go to bed?" that no answer was made him, but the daughter and he went to the hearth-stone by the fire; that afterwards the child, which was in bed with the father, set up a scream; he does not know what was the matter with the child; that the prisoner got up, and came out into the house-part, and brought out a candle with him, which he lighted at the fire, and looked at the clock, and said, "It is time for bed, it is between two and three o'clock;" that he put the candle upon the floor, and took his hat off the nail, and put it upon his head, and went out of doors; that in about a quarter of an hour he came in again, and brought with him Jonathan Barber; that the prisoner took up the candle off the table, and went with Barber into the parlour; that having stopped a quarter of an hour, as nearly as he can tell, Barber left Joseph Brook in the bed-room, and went home, and the witness remained in the house-part till between five and six o'clock in the morning. On cross-examination he says that it was twelve when he went in, that the clock was in the niche by the fire-side, and he looked at it, and heard it strike when he was at the door; he had gone to Brook's once a week for a year and a half, so that it seems this courtship had been of a considerable continuance; whether Hannah was out of bed when he knocked, he cannot tell; he never asked her, whether she got up to let him in; but he was at the door about four minutes, and when she opened the door, she was dressed; he dares to say she expected him, as it was the appointed night, but he had not fixed any hour; it was at Brook's house he made the appointment with her the Sunday night before; when he got there, there was no candle, and when the prisoner came out, he lighted the candle by the fire-side; he does not know whether Brook knew that he courted his daughter; afterwards he explains this by saying, that Brook knew he was a sweetheart of hers; and it is impossible he should suppose

otherwise, if he was in the habit of docting for a year and a half before, and at all times, as it seems. The hearth-stone was about five yards from the parlour where Joseph Brook's bed was, and he mentions the door being open between the parlour and the house-part, where he and the daughter were. He repeats, that when the prisoner came out of the parlour, he looked at the clock with the candle, and said "Is n't it time to go to bed? it is between two and three o'clock;" and he says that was all that passed. He (the witness) went away between five and six in the morning, and Hannah Brook shut the door after him.

They then call Jonathan Barber, who states that he lives very near the prisoner; that he sometimes helps his neighbours with a few herbs when they are out of health; that one night last October, Joseph Brook called him up in consequence of the child being taken ill; that it was Monday morning, the 5th of October; that he went with him to his house; he saw, when he came there, a young man in the house-part, sitting up with the daughter; he went through into the parlour with Joseph Brook, and talked to his little girl; she could scarcely speak to him; the disorder she had was called the croup; he gave her some tea, that had before done her good; in a quarter of an hour he came away, and left the prisoner in bed with his wife and two children; he came through the house-part again, and saw the same young man and woman there as when he went in; he left the house, and went home, and left the young man and woman in the house-part. He says that he has known the prisoner ever since he was a child; that he is a hard-working labouring man for his family; that he is a distant relation of his; that he (the witness) is often called up in the night; that he made some memorandum which is not here; that he generally makes a memorandum as to the time he is called; that he looked at Brook's clock when he went in, and it was exactly half-past two; that the prisoner, lives about twenty yards from him; that he was in a great hurry.

There were a great number of questions put to him by the counsel for the prosecution, to all of which he answered in the affirmative; that he went directly; that the child was very bad; that he got some water at the fire to make tea. This is not what he said of himself originally, nor was it any part of the detail of the transaction; but he seemed to be inclined to answer in the affirmative every question put to him; which questions were put by way of trying his veracity, and to contrast his evidence with that which was given by the other witnesses. He says he got some water at the fire to make the tea which he gave the child; that Hannah Brook got the water boiled; he does not think it was more than ten minutes in boiling. He is asked whether the young man did not afford some help to make this tea or mend the fire; he says, yes, the young man potted the fire a bit, and made it burn

under the kettle; then he says he brought the child from the bed to the fire, and had it on his knee; he speaks of having made the tea in a mess-pot that was upon the table just behind, he put the ingredients in, and poured water upon them, and he had syrup of poppy. Being asked this, like all the other, whether he had not some syrup of poppy, and whether he did not cool the tea with it, he said yes. He says the child was in the house-part, by the fire, and that Hannah sometimes had the child, and sometimes he had it; it did not cry much; he is asked whether the child made wry faces, and he says yes it did, and Hannah composed it, and he carried it to her father and mother in the bed-room; he just looked in at the parlour door, and saw them there in bed. Certainly the young man, the sweetheart of the daughter, had given no account at all of this having passed. He had stated, that he was not present in the room where Barber went with the father. He represented that Barber went into the room, and doctored the child, and came out again, in effect contradicting all these transactions passing there, which this old man stated in consequence of questions put by the counsel for the prosecution, giving answers in the very terms in which the questions were all put, which formed no part of his original examination. He is asked as to the distance from Coln Bridge to Raistrick, and he says, Coln Bridge he thinks is about two miles from Raistrick, Coln Bridge being, as you know, the place where Naylor met a man, whom he will not swear was the prisoner. The witness does not precisely know the situation of Smeckland's house, but it is by the moor side, and he says it is nearly as far from Coln Bridge as Coln Bridge is from Raistrick, that is a distance of about two miles. He states that Brook's wife never got up at all.

Hannah Brook states herself to be the daughter of the prisoner, and to be very well acquainted with John Kaye. She knew him in the month of October, he was a sweetheart of her's. She cannot tell exactly how long he had been so, he had been so for many a month before that month of October. She remembers her father being taken up; it was on a Wednesday. She had seen Kaye on the Sunday before that Wednesday, in the night, a few minutes after twelve, at her father's. She did not know rightly that he would come at that time; she expected him to come that Sunday, because he usually came on a Sunday. She thinks she had seen him on the Saturday week before. He did not say any thing about it, but she looked for him as usual. He stated to lay that he had made an appointment to come on that Sunday, but no hour was fixed. She differs from him a little in that respect, but she agrees that she expected him that Sunday. She says when he came, the family were all in bed, except her sister and her, in the house-part. The man had certainly said nothing about seeing a sister. There was no question, I think, put to him upon that subject; but he

had not stated the sister being in the house, in company with Hannah, when he came in. She says Kaye knocked at the door, and she let him in. When she let him in, the father said, "Is n't it time for bed?" That was said at the time of opening the door. Her father knew that she was acquainted with him. After she had let him in, they stopped on the hearth-stone, and there was a fire, which had been raked up. She sat with him, she swears, till between five and six in the morning, the time that the other witness had stated. She mentions that the child cried in bed, in a little parlour with her father and mother; there were two children with them; it might be five minutes after her hearing the child, that her father came out of the parlour-door, came to the fire, lighted a candle, and went and looked what time it was; and she thinks he asked them if it was not time for bed yet. He set the candle down on the table, and went out of the door; he might be ten minutes or a quarter of an hour away, and then he brought with him Jonathan Barber. Barber went into the room where the child was; he took something with him when he went in, but whether he did any thing to the child, she does not know; the child was between four and five. It was tea of some sort he gave the child; she does not know where it was made, but she says that the tea was not made in their house; that he made the tea, as she supposes, at home, and there was no water used in their house. The first witness, the sweetheart, had not stated a word of there having been any tea made in that house, but had spoken of the doctor going into the room, and that whatever he did, was done in that room. You have heard what this doctor said, inclined to answer every question in the affirmative, which the counsel, on cross-examination, put to him, fancying these things to have happened. The old man is silly enough to say that they all passed. Whether he was not inclined to babble, and to answer yes to every question put to him upon cross-examination, you will consider upon the whole of the evidence, keeping in mind the circumstances in which he differs from the other witnesses. She says that she does not know what he used in giving this tea to the child, she was not in the place with him; he might be a quarter of an hour with the child, or ten minutes; and Kaye and she were sitting on the hearth-stone, while Barber did what he had to do with the child, which was in the father's bed-room; the father never came out afterwards; Barber went away, and shut the house door after him, and she fastened it. She was awake till Kaye went away, and her father never got up and went out before Kaye went, and she is very sure that that was between five and six o'clock. Her sister is between eighteen and nineteen. She supposes she stopped about five minutes with Kaye and her, and then she went to bed. The witness thought The father was awakened by the sweetheart's coming in, and called out through the cham-

bar-door, which she says was shut. There is a difference between this witness and the sweetheart, for he speaks to the parlour-door being all the time open. She says that when her father called out, "Is it not time for bed?" they made no answer, and that the door was shut; and that when she heard the child scream, her father opened the door when he came out. She says that the clock stands facing the door, not near the chimney. There is some difference as to the situation of the clock; but it is not pretended that there is not a clock of some kind or other, and this woman is probably best acquainted with the situation of it. She says the child was never brought into the house-part, that she never saw the child at all, it was not brought out of the father's room. Barber had given it stuff many times before, that had done it good; but she does not know that Barber ever attended the child in the night before.

Gentlemen, you will consider, whether you are satisfied that this case is clearly made out against the prisoner at the bar, and whether it is established that he is one of the persons who so attacked the prosecutor's house this night, and who so robbed and plundered it. The prosecutor has given you an account of what passed there, and according to his evidence he was intimidated by the threat and uproar of the people on the outside of the house, by their banging at the door, and insisting upon entrance, in consequence of which he opened the door, and let them in. These are such acts of violence, as compelled him to open the door, and would be just the same as if they had burst the door open without having prevailed upon him to open it. He certainly has had his house plundered of his watch, and of money partly his own and partly his niece's property, and under circumstances that carried with them a great degree of terror. He himself does not undertake to swear to his belief, as to any of the persons from whom he received this injury. Ann Armitage, the niece, has told you all that she had an opportunity of seeing, which was from the striking of the light by the rubbing the sword or other iron instrument against the floor, which I have observed would produce a flash and no more; and it was from that flash that all the observation she could make was drawn. She has told you that the man's face she saw, appeared to be blacked and streaked down the cheek, and she undertakes to describe the colour of the coat, and to say that she discovered enough of the man's countenance to believe him to be the prisoner, for she will not go at all further or take upon herself to say that he was the man. Upon that entirely rests the case against the prisoner, with the exception of the evidence of John Naylor, and of Armitage the brother. And it will be for you to say how far that evidence of belief of the witness, which belief is drawn from the sources only that I have mentioned, goes to satisfy you, taking into your consideration the other evidence that has been given on the part of the

prosecution, that the prisoner at the bar is one of those persons who robbed the house. Now what Naylor has been enabled to state is this, that upon that morning, about four o'clock as he apprehends, he met at a place which is about the distance of two miles from the prosecutor's house, three men, two of them running by and passing him, and the third who was also running, stopping a little, and walking past him. He states his having spoken to the third as he passed, but not to the two first, but that he was coming in a direction as from Kirk Heaton, there being (according to the map at least) several intermediate places before Kirk-Heaton. He speaks only to the colour of the coat that the man had on, which was dark, and that his person was that of a stout clever man. When he spoke to him, he received no answer, so that he had no opportunity of observing his voice. The witness says, that he set off running again, and he was going then in a direction towards Raistrick; that the place where he saw him was about two miles from Raistrick, and that he believes the prisoner to be the man, but he will not swear to him.

Armitage's evidence only goes to show, that on the Sunday before, he met with one Holmes, in company with the prisoner at the bar, and that Holmes, after some conversation, stated that Strickland had plenty of money, but would not bring it out; and Armitage concludes that the prisoner must have heard this; but it does not appear that the prisoner took any part in the conversation, so as to assure the witness that he did hear it.

The evidence on the prisoner's behalf, if it is not altogether fabricated, goes to show that he was not at Strickland's at the time this house-breaking was committed; for if it is true that he was at home at twelve o'clock at night, and continued at home, with the interval only of that short space, when he went to fetch this village doctor to his child, which was not above a quarter of an hour, from twelve till between five and six in the morning, he certainly cannot have been one of the persons who engaged in this robbery of the prosecutor's house. You have heard the account they have given, particularly the daughter, and Kaye her friend, to that effect. By way of confirming them, they have related the going out of the father for a short time to fetch Barber. The counsel for the prisoner have called him, and upon his examination, on the part of the prisoner, he certainly did not give any account, materially inconsistent in any circumstance with the account, which the other man had given, and which the daughter afterwards gave. He stated that he saw them in the house together when he came, and when he went away; that he left them there, and so on. When cross-examined by the counsel for the prosecution, questions were put, to every one of which this man answered yes; you will consider whether he was babbling, and not reflecting what he was about. The account he gave, in answer to those questions, differs materially from

the account the other two witnesses have given; which difference, if it is so material, will show, that, in point of fact, these parties were not there. However, one part of your consideration will be, the uncertainty with which the witnesses on the part of the prosecution are enabled to swear; I should rather say, the witness, that is the niece, who had no opportunity of observing his countenance, or his dress, but the one single flash from the sword. She has stated in addition to that, that she had an opportunity of hearing his voice while he was in the house, and that she heard it afterwards at Mr. Radcliffe's, and that, from his voice, she thinks she can undertake to say, she believes him to be the man. Naylor, who met the three men running about four in the morning, in a direction from Kirk-Heaton, does not swear that it was the prisoner at the bar that was so running, only that he believes him to be the prisoner; and then there is only that other circumstance, related by Armitage, that about a week before, the prisoner was present in the road at a conversation that passed between Armitage and Holmes, about this poor man having money. This is the whole case for your consideration.

It will be for you, gentlemen, to say, whether the evidence given on the part of the prosecution, coupled with that laid before you on the part of the prisoner, satisfies you of his guilt. If you are satisfied by the evidence, that he is guilty, it will be your duty to find him so. If you find no reason to doubt the truth of this alibi, notwithstanding the babbling of the old man, as to the circumstances he stated about the making of the tea in the kitchen, and so on, which neither of the other witnesses have spoken to, that will be a ground for your acquitting him. If you are not satisfied that the case proved originally made out sufficiently that the prisoner was guilty, you will acquit him. You will consider the whole of the evidence, and give that verdict which you think the case requires of you, and which will do justice between the prisoner and the country.

The Jury withdrew at a quarter before three, and returned in about five minutes, finding the prisoner, Not GUILTY.

They afterwards declared that they disbelieved the alibi.

#### THE KING

against

JOB HEY, JOHN HILL, and WILLIAM HARTLEY.

The prisoners were indicted for a Burglary, at the house of George Haigh, at Skircoat, on the 29th of August last, and severally pleaded, Not Guilty.

[The Indictment was opened by Mr. Richardson.]

Mr. Park.—May it please your Lordships;  
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Gentlemen of the jury; This case, I hope, will not occupy so much time as the last did, for we have been employed three hours, I think, very unnecessarily, in the latter part of that case. I have asked, whether there are any witnesses to an alibi in this case, and I find there are not; the case then is a very short one. Mr. Haigh, whose house has been broken open, is a gentleman residing near Copley Gate, at Skircoat near Halifax. On a Saturday in the month of August last (but whether Saturday the 29th or Saturday the 22nd, I am not prepared to state to you) between eleven at night and one in the morning he heard a violent knocking and noise at his front and back-doors; he got out of bed, and went to the landing-place of his house, and there he could hear distinctly what passed without-side the door. He called out to know what was wanting, upon which a man answered, "My master, general Ludd, has sent me for your fire-arms." He said he had none. A voice said, "We know you have two guns and four pistols, and if you do not immediately deliver your fire-arms, we will break in, and take your fire-arms; quick, quick, quick." The prosecutor was unwilling to deliver up his fire-arms, but a servant of the name of Tillotson, advised his master not to resist, upon which there was a gun given, and afterwards a pistol. He had several pistols in the house, but he acknowledged having only one. He gave it to Tillotson to deliver, and it was delivered to the gang. The pistol will be produced. It has been traced, and I will tell you presently where it was found. It is now in the possession of the witness; and the prosecutor and Tillotson will swear, that they verily believe it to be Haigh's pistol, though not in the same state in which it was at the time it was delivered. We shall produce to you also the stock of a gun, which was found on the outside of the door of the house. I have told you that there was a great deal of knocking at the door, before admittance was granted. Whether there was actually firing on the outside I do not know, or whether it was only by that sort of thumping and violent blows, which the witnesses on the inside, in their terror, might suppose to be firing. I understand that the accomplice I am about to call, and the prisoners themselves, say there was no firing. I understand Mr. Haigh and his man will say one piece was fired, but whether there was or not, it does not signify. There can be no earthly doubt upon this case, for all the prisoners at the bar have admitted they were present. It will be proved to you that the gun of one of the men was broken, and it is the stock of that, as we suppose, which was found on the outside of the door, and the door remains marked with blows from a gun-stock.

I shall call before you an accomplice, who will tell you that a considerable number of them met about ten o'clock on the evening in question, on purpose to commit several robberies on that night, and among others at the



house of the prosecutor, Mr. George Haigh, at Copley Gate; that they put on no disguise on setting out, that in the course of their proceeding they took a gun from a person; that William Hartley was the leader that night; that they knocked at Mr. Haigh's front and back doors; that they were not answered so soon as they wished; that Job Hey struck the kitchen-door, by which he broke the stock of his gun (and we shall produce the stock of a firelock which was knocked off); that they insisted on guns and pistols, and that they were given to them by the master and the servant; they will also prove taking a top-coat out of the kitchen, and that it was afterwards left at Copley Hall. Tillotson will tell you that they took that top-coat, and that he got it back from Copley Hall.

I shall then call lieutenant Cooper to produce the pistol, and I shall prove where it was found. Lieutenant Cooper put one of these prisoners (Hey) with a sergeant of the name of Clarke, and while he was at his house he had conversations with him. The prisoner (Hey) was asked, whether he had not some fire-arms in his house, upon which he told him he had a pistol concealed in his dwelling-house, between the chimney and the roof. Sergeant Clarke went to his house on the 14th of December, and found in the very place pointed out by him, the pistol, which will be now produced, which he delivered to his officer, which the officer has delivered to a constable, and which the prosecutor Haigh and his man will swear that they believe to be the same they lost.

I shall not enter into other matters, on which these prisoners were examined, but I shall lay before you the voluntary confession of all the prisoners, and I am assured there was neither intimidation nor threats, nor promises, nor inducements held out to make them confess, and that they were told, "if you say anything upon the subject, it will be used as evidence against you;" notwithstanding which caution, Job Hey, who is one of the prisoners, when interrogated on this subject, says, "I was there;" John Hill says, "I was there, but there was no gun fired in the kitchen;" William Hartley says, "I was there, but I received no arms" (that is probable enough), "nor did I make any demand of any." It is probable that he may not have been the particular person to make the demand; but their lordships have had occasion to tell juries in your place, and probably some of yourselves, that if all these persons went together for this illegal purpose, it does not signify which particular person did the particular act, but if they were all there in that illegal transaction, they are all equally guilty of the offence imputed to them.

The Evidence was summed up by

Mr. Justice Le Blanc.—Gentlemen of the Jury, The three prisoners now at the bar, Job Hey, John Hill, and William Hartley, are indicted for a Burglary; an offence similar to

some of those you have before tried; namely, the breaking and entering a dwelling-house in the night-time, with intent to steal, and stealing certain property therein. The property they are so charged to have stolen, consists of a gun, a pistol, and a great coat. The material things, are the gun and the pistol.

The evidence that is produced in support of the prosecution, is, first the evidence of George Haigh, whose house it is stated they broke and entered. He says that he is a wool-stapler, living at Copley Gate, in the township of Skircoot; that on a Saturday night in the month of August, he believes it was the last Sunday in August, but he is not certain, after they had been in bed some time, they were alarmed, and he was awakened by a loud rapping at both the front and back door of his house; he supposed from the time, that it must have been about twelve o'clock at night; that upon that, he got up and went down to the landing of his staircase; and he appears never to have stirred from that staircase during the time of the robbery. He says, that while he was there, he still heard this loud knocking at the door, with something that sounded as if it was a large thing, the butt-end of a gun, or something that would make a similar noise; that other people were knocking at the front door; that he heard the voices of several people calling out; that he heard them call out "Your arms," he having said "Hollo, what do you want?" and that another voice said, "General Ludd, my master, has sent me for your arms;" he answered that he had none; the voice answered "You have," in a rough coarse tone; he said, "I have nothing of the kind—for God's sake go home." Upon that, he says, that he heard a noise, but he could not tell whether it was a noise proceeding from the firing of any pieces, or whether it was from repeated strokes given against the door of his house, and then somebody said, "You have two guns and four pistols;" he said to them, from within, "We have nothing of the kind, nor ever had," he (Mr. Haigh) standing all the time upon the landing-place of his house. Then he says that a man of his, of the name of Tillotson, came up to him and said, "Master, you had better give them the gun, for they will shoot us." Upon that, Tillotson immediately went down stairs with the gun, and presently returned to him again; and when he returned again, he (Haigh) gave him a pistol, and then Tillotson went away. He says, that while he was standing there, he again heard them speaking below stairs, and the voices appeared to come from the kitchen, "Your arms, your arms, be quick." He being upon the landing, could not positively himself say where it came from. That is the account given by Mr. Haigh.

Then the man, Tillotson, who appears to have been in a greater hurry to satisfy what these people demanded of them than his master was, says, that, being in bed, and having heard this knocking at both the front and back door, on this Saturday night, as he supposed a little

after twelve o'clock, and having heard the people use that language which Mr. Haigh has spoken to, and which he repeats; and having heard his master tell them that they had no arms; he also heard the people from without say, that they in the house had arms, and if they did not deliver them up immediately, they would break in, that they knew of four pistols and two guns; he says that they continued still knocking at the door, and that he opened the door, because his mistress told him he might get up and open it, and give them the gun, they having said they would break open the door if he did not give them the gun; that when he opened the door, the men ran away from it, but they met some others coming round from the front of the house, and then they turned back again, and asked for the guns and for the pistol; that he, standing within the house, gave to them, who were without the house, a gun, none of them at that time coming in; that they had a conversation with him afterwards, and asked him if it was fireable, and he told them it was fireable; that they told him there was no ramrod, and that if he did not immediately find it they would shoot him; he told them that he could not find the ramrod; and then they wanted another gun, and four pistols; he told them that they had a pistol, and that was all; and he retired into the house to get the pistol, when the men immediately followed him into the kitchen. He says, that he went up stairs and brought down a pistol from his master, and gave it to them in the kitchen; that it was his master's gun and his master's pistol that he so gave to them; that the people, to whom he gave them, were armed, some with guns, and some with pistols in their hands; and that at the time he so gave the gun and pistol to them, some of them held the pistols and guns they had in their hands close to his person, and told him, if he would not deliver them the guns and the pistols, they would shoot him. He says, that after they had taken the pistol, they told him that if his master did not sell his milk at home among his neighbours, they would visit him with immediate death. There was something of this same sort mentioned by Mr. Haigh himself. Tillotson says, that some of them took a top-coat, which was hanging in the passage going to the kitchen, that belonged to him; that top-coat, however, was brought back by a farmer's man in the neighbourhood, the next morning, and given back to him. He says, that the next day he examined the doors, and that they were thumped as if they had had stones against them, or as if they had been marked by guns; and he speaks to finding part of a gun-stock the next day near one of the doors. He is asked particularly as to the time; he says he thinks it was twelve at night, and that it was quite dark.

According to the account given by him and by his master, there was a very loud knocking at the back and the front doors, and the voices of a number of people on the outside, calling

out for them to deliver their arms, saying, they were come to demand their arms, that they would break open their doors and shoot them if they did not deliver their arms; a gun was delivered to them, none of them having been in the house; but still persisting in having more arms delivered, and following into the house, the servant, whom they had so terrified as to make him open the door, they there received the other piece of fire-arms, which the servant admitted they had in the house. So that if you are satisfied that these people came with an intention of robbing this house of the arms which the inhabitants had, and of compelling them by threats and violence to open the doors, or otherwise of breaking open the doors themselves, and then going in and receiving the articles in the house, it is in contemplation of law a burglary; and according to this account, they knocked at the door, exclaiming on the outside what they came for, and swearing they would shoot the inhabitants if they did not deliver their arms; and then afterwards a number of them came into the house, and there received one of the articles; the other, the gun, having been received by them outside the door.

They then call a man of the name of Joseph Carter, who was certainly one, according to his own account, of these persons so assembled on this night. His account is, that he and the three prisoners, and a number of other persons, in the whole nine or ten, assembled in a field, by appointment, on a Saturday at the end of August, early in the evening, that is, eight or nine o'clock in the evening, and that the purpose of their so assembling was, to go about and take arms and guns from different people's houses; that they afterwards proceeded to different houses, and among others went to the house of Mr. George Haigh; that they got there somewhere near twelve; that he himself and the three prisoners, Hey, Hill, and Hartley, were there; that some of them went to the front door, and some to the kitchen door, and knocked hard with guns and pistols, and demanded arms; that they were told from within, that they had none, and some of their party said they knew they had got two guns and four pistols, and they would have them. He describes the door as opened by Tillotson, the servant, and says, that upon that some of the people went back, till they met the greater part, who were coming round from the front door; and that then having joined them, they went back to the kitchen door, and told Tillotson that they demanded his arms; that he brought one gun to them, and one of the party took it as it was handed out of the door, and that then they told him, he had more arms, and they would have them; that Tillotson went back, and they all rushed into the house after him; that Tillotson then went, and fetched a pistol, and gave to one of them; and that then they told him, that if his master did not sell his milk among his neighbours at two-pence a quart, they would visit him again.

This is the account given by the accomplice Carter. And on reading over his account, and comparing it with the account which you have just before heard from Haigh, and from his man Tillotson, it agrees in every particular as to what the people said, the way in which the different doors were beaten and knocked, and the manner in which some of the robbers retreated, till they were joined by their companions, and afterwards received the gun from Tillotson, and then followed him into the kitchen, where the pistol was delivered to them. Carter likewise says, that one of them took a top-coat from the passage of the house, and threw it over the arm of one of the prisoners, Job Hey, and that he carried it from the house to a place called Copley Hall; and then he began to inquire whose it was, whether it belonged to any of the party that was there or not; and finding it did not belong to any of his companions, he said he would not carry it any further, but leave it there, that not being the object of their going to Haigh's. They seem to have gone to his house with no other view, but to take the arms. But, if they went with a view to break into the house, or to compel the persons belonging to it to let them in, under the fear that otherwise they would break into it, whether it was to take arms or money, it is equally a burglary; because the owner of them is no more obliged to part with his arms, than with his money, to these persons, who have no right to require either of him. He then gives an account that that great coat was left at Copley Hall, and given to one of the farming men there, to be taken back. That the prisoner Hey took the gun, which had been so taken from this house of Mr. Haigh's and some one else of the party took the pistol; that the pistol was carried to Sowerby, and the gun to North Dean; and he gives this farther account, that the prisoner Hey had a gun, which he broke the stock off, by knocking against the kitchen door with it, and that part of the stock of the gun, which he so broke by knocking against the door, was left behind them, when the party went away. He says no arms were fired off, while they were at the house, but there was the noise of striking the door, and some one of them, after they got into the house, struck the table with a stick that he had in his hand pretty loud. He says the gun, which was broken, was a gun they had taken from some other place, in the course of that night.

On his cross-examination he says, he himself is a cotton-spinner, living at Greetland: that he now comes from the House of Correction at Wakefield, where he has been for the purpose of securing his being examined here; that he was taken up for another offence in the month of December, and then disclosed this offence together with others. You will look at his evidence in the same way in which you, or gentlemen sitting in your place, have had occasion to consider other evidence of the same nature, namely, as suspicious; and see

whether or not, from the manner in which it tallies and agrees with the evidence of others, it appears to you that the man is telling truth. And to be sure, with respect to almost every particular of what passed on the attack of this house, as given by Haigh and by Tillotson, the account given by this accomplice tallies with theirs, as to the expressions used, the noise made, the manner in which the door was opened, the retreat of the people at first, their afterwards going in, and what arms were delivered before they came in, what arms were discovered afterwards, and the expressions repeated by the servant, that if his master did not sell his milk among his neighbours they would come again, which had nothing to do with their attack. These people having assumed to themselves, in the first instance, the privilege of coming to demand arms, the next thing was, that they should dictate to the party, in what way he should dispose of his property, whether of one sort or another.

The next witness is Thomas Clarke, a serjeant of the Suffolk militia, quartered in that part of the country; and he is called to speak to the fact of finding a pistol in the possession of one of the prisoners, Hey. He says that he was quartered at Elland; that their commanding officer was lieutenant Cooper; and that in the beginning of December he went with the officer and a party of soldiers, to apprehend the prisoner, Job Hey, at his house at North Dean; that in searching his house they found a quantity of gunpowder; he weighed it, and it was three pounds and a quarter; that the account Hey gave of it was, that he had brought it from on ship-board sixteen years before; but the serjeant says, as far as he is a judge of gunpowder, it did not appear like powder that had been kept sixteen years; that it was in a paper wrapping in a handkerchief, and it appeared to have a greater degree of freshness than it would have if it had been kept so long. He also says, that Job Hey continued in their custody for some time, and while he was under his care he asked him if he never had a gun, and Hey told him he never had a gun in his possession in his life. The serjeant afterwards asked him if he had not a pistol, and he said yes, he had one, and that if the serjeant went into his chamber at his house, where he took him up, he would find the pistol between the chimney and the roof, doubled up in one of his (the prisoner's) boy's old jackets. The serjeant says that he accordingly went and searched, and found the pistol doubled up in the boy's old jacket between the chimney and the roof. He returned with it to the prisoner, and showed it to him, and the prisoner said, "Yes, that was the pistol." The serjeant kept it in his possession till the next morning, when lieutenant Cooper came home, and he gave it to him. Lieutenant Cooper gave it to Mr. Whitehead, the constable, in the presence of the magistrate, Mr. Radcliffe; and Mr. Whitehead produces it, saying he did so receive it, lieutenant Cooper being present.

That pistol is then looked at by Mr. Haigh, by his son, and by his servant John Tillotson, for the purpose of seeing whether they can speak to it as being that pistol which was so taken from Haigh's house on that night. It appears that the pistol which was taken from Haigh's house was one which the son of Haigh had bought about six weeks before. He had fired it, and the servant had fired it likewise, and they had it in their possession six weeks; but, there being no particular mark put upon it to distinguish it from any other, all they say is, that it is the same sort of pistol they had, but that when it was taken from them it was a new pistol, and that now it has been scratched and had had usage, so that they cannot take upon themselves positively to swear that the pistol is the same that was taken from them, but that it is a pistol of the same size and description, there being no particular mark by which they can swear to it. The result of which is, that this pistol so found in the possession of the prisoner, and which he directed the serjeant so to find on being inquired for, is a pistol of the same description as Mr. Haigh was robbed of on that night.

They then proceed to give you in evidence, on the part of the prosecution, the examination of these three different prisoners, when they were taken up, in consequence probably of information given by the accomplice before the magistrate. Mr. Lloyd, who was present at the time, has given the account, that at their examination they were told they might say any thing or not; that there were no promises held out to them to say any thing, and that they were told what they said might probably be used against them; and that they afterwards signed the examinations which have been given in. Without going through the other parts, which do not relate to the subject under inquiry now, Job Hey says, that "as to the robbery at Mr. George Haigh's he was there."

The prisoner Hill, on his examination, being charged with a burglary at Mr. George Haigh's of Skircoat Green, says, "I was there, but there was never a gun fired in that kitchen." According to the account of the people themselves, they do not say that a gun was fired in the kitchen; they doubt whether a gun might not be fired on the outside of the house, or whether it was the report of the doors being struck. The prisoner Hartley being charged with the felony at Mr. Haigh's, says, "I was there, but I received no arms, nor made any demand of any." That is the account they have each of them given.

If a number of men meet together, for the purpose of going to plunder houses of arms, it is perfectly immaterial, whether the particular persons brought before you, charged with being principals in that robbery, are the individuals themselves who either asked for arms, or received arms, or fired off arms, or even knocked a blow at the door; for every person who goes and adds his countenance and his strength to the party, to make it more numerous,

and is present taking the part allotted, either of appearing and making a noise at the door, or any other part, is equally guilty of the burglary with the man who actually demands or actually takes the arms. The only question to be inquired into is, whether the evidence satisfies you that the persons charged were part of that company, who went together for that purpose, and whether it was in pursuance of that purpose that the fact was done among them. As to the particular persons being there in the present case, you have the account given by the accomplice speaking to the whole, and tallying exactly in all its circumstances with the account of the robbery as detailed by Mr. Haigh, and by his servant; and as to the particular circumstance of a stock of a gun, which one of the people had, having been broken, and a part of it left behind, which was found next morning near one of the doors. And in addition to this, besides confirmation of the expressions used, you have evidence that these men, when taken up, all of them admitted that they were there; though one denies having taken any arms, and the other says that no guns were fired off; but still they all admit that they were there present at that time. If so, to be sure they are guilty.

On the part of the prisoners themselves, you have two witnesses called to character, Mr. Bradbury and Mr. Hollingworth. They speak to the character of the prisoner Hill, whom both of them have known for two or three years. They speak of him as an industrious, honest, sober man. Mr. Bradbury also speaks to having known Job Hey nearly three years, and that he ever found his character very fair, up to the present time. With respect to the third prisoner, Hartley, he knew nothing himself about him, he knew no harm of him, but he knew very little of him.

With regard to character, in inquiries into offences committed upon the present occasion, general characters for sobriety or for honesty up to the period, when these unfortunate tempers and dispositions broke out, has less weight than perhaps in most inquiries with respect to robberies which are brought before juries; because, one is sorry to see that many men, who are good workmen, who are industrious, who are in other respects honest, and who perhaps would not have broken into any house in the outset of these disturbances, for the purpose of stealing any thing else, have thought themselves justified, by the fever with which they were actuated, to break open houses and steal arms. You will judge how far the evidence brought before you, satisfies you that these three men went to Haigh's for the purpose of violently demanding the arms that were taken, threatened and knocked at the door, forced the man to open it, when they had got the gun insisted upon the pistol also, and received the pistol in the house. If so, in point of law, it was a breaking and entering the house, and there stealing that

pistol. If you are satisfied of that, you will find them guilty. If you see any reason to doubt it, you of course will acquit them.

The Jury immediately pronounced  
Job Hey, John Hill, and William Hartley—  
GUILTY.

*Tuesday, 12th January, 1813.*

THE KING

*against*

JAMES HEY, JOSEPH CROWTHER, and NATHAN HOYLE.

For robbery of James Brook, in his Dwelling-house at Huddersfield, and for stealing in, the said Dwelling-house, Brook being therein, and being put in fear, on the 29th of November.

[The prisoners having pleaded Not Guilty, the Indictment was opened by Mr. Richardson.]

Mr. Park.—May it please your Lordships; Gentlemen of the Jury, I am very sorry that the three prisoners at the bar have obliged me to bring down the depredations, of which we complain, to so late a period in the last year, for this offence happened as far down as the 29th of November. We shall proceed principally upon the second count opened to you by my learned friend, namely, the stealing from the dwelling-house, and putting in fear; which their lordships will tell you, by an act of parliament in the reign of king William was made a capital offence. The circumstances of the case are extremely short in themselves, and I am sorry to say as against the prisoners at the bar (unless I am deceived by my instructions, of which I have not any suspicion) are very clear.

The nominal prosecutor, James Brook, is a poor man, a coal-miner, living near Far Town, about two miles from Huddersfield. The prisoners at the bar are all, as you see by their appearance, men in an inferior station in life; one of them is a woollen-spinner, another a cotton-spinner, another a weaver; and I cannot conceal it from their lordships, or from you (as it will be proved by all the witnesses, at least those who knew any thing of their transactions, and by the confession of one of the prisoners) they went out on the night in question to commit various depredations. It seems that Hey took a very considerable share in the business, and so did Crowther.

I shall have occasion to call before you a man of the name of Carter, who was examined last night, who was of that party that were convicted last night, and who was also of this party. He will go minutely through the history of the transaction; he will prove to you, among other things, that they came to the house where Brook lived, and (as Brook himself will fully state to you) he was standing at his door, about eight o'clock in the evening. They insisted upon entering his house, and

did enter it; they called upon him to deliver up fire-arms; he told them for a considerable time he had none; they still insisted upon having fire-arms, upon which he said, at last, "Well, I have an old gun, but it is of no use;" he shewed it to them, and upon examining it they found it was not a fireable piece (to use an expression we heard yesterday); they then insisted he should give them money; he said he had none; they persisted that they would have a pound note; he insisted he had not one; however they took him up stairs, frightened him very much, as you may suppose, and at last they forced open the cupboard, and there they found a pound note and some silver, which they took away from him; and you will find from the evidence that will be laid before you, that that night they divided fifteen pounds a-piece.

I shall have occasion to call before you a person of the name of Edward Crowther (not a relation, I believe, of the prisoner Joseph Crowther) who was in their confidence, though he does not appear to have committed any of the felonies. On the day of the robbery, a conversation took place between this Edward Crowther, the prisoner Hoyle, and another man of the name of Mitchell. They proposed to go that afternoon to several places at Bradley Gate, which Hoyle, the prisoner, pointed out to them, and they were to meet at a place appointed, about seven that evening. Edward Crowther and Mitchell did not keep the appointment. The first time after this that Edward Crowther saw Hoyle, was at his own house, on the following day about noon, when the prisoner Hoyle called upon him and said, "Why did not you come?" and cursed him for not having kept his word, and told him they had done exceedingly well, and that there was nothing like going into a country they did not know. Whether the place selected for this scene was a place in which they did not usually reside, I know not, but that was his expression, that there was nothing like going into a country they did not know.

Besides that, I have the examination of the prisoner Crowther, taken (as I am informed) without the least promise or intimidation. Upon being examined before a magistrate, on the 16th of December, when various charges were made against him, and amongst the rest the one in question, he says, "The prisoner saith he is guilty; James Hey, and Joseph Carter wanted me to go with them; there were Nathan Hoyle and others." You will observe, gentlemen, though the prisoner Crowther's examination may be read against himself, yet what he says of A. and B. you will totally put out of your consideration. I cannot help reading it, for I cannot take the words asunder, without destroying the sense. Therefore you will not suppose I read these names to raise the slightest prejudice in your minds against other prisoners; on the contrary, I earnestly entreat you to dismiss all prejudice. Thus it goes on, "There were only four of us

there. I am speaking of one Sunday night, the last but two;" which is exactly the case, that would make it Sunday the 29th of November. "They came to another place, and Hey said, this is a likely place, and it will pay the two men who should have met us." Those were Jonas Mitchell and Edward Crowther. "We went in and demanded a gun first; he said he had none, nor a pistol. We then demanded a pound note, but he said he had not one." Brook will prove every tittle of this having passed. "He showed an old gun, but they would not have it, but insisted upon having a one pound note. He then searched in a cupboard and found a pound note, or something, but I do not know what, and some silver." There is a great deal more, but I will not read it. This appears to me, gentlemen, to be one of those cases upon which very little doubt can rest in your minds.

The Evidence was summed up by

Mr. Justice *Le Blanc*.—Gentlemen of the jury; this is an indictment, varying in the form of the charge, from any which has yet been brought before you. The others have been either for breaking and entering a house in the night time, or other violence done to the house. This charges the three prisoners at the bar with putting James Brook in fear, and taking from his person, and against his will, several articles mentioned in the indictment; a watch, a promissory-note for the payment of money, and two pieces of silver coin, that is to say, a shilling, and a silver token for three shillings, his property: And there is likewise what we call another count in the indictment, not stating this, expressly to have been a taking from the person, but a stealing of the property in the dwelling-house of James Brook, he being in the dwelling-house, and being put in fear. The charge is varied in the manner of laying it, to accommodate it to the circumstances which may afterwards appear in proof. With respect to the nature of the offence, it is the same; for, whether the property of the man is taken from his person, and while it is under his immediate protection, by force and violence, or by putting him in fear; or whether it is taken out of his dwelling-house at the time he is in his dwelling-house, and put in fear, though the property may not be immediately under the protection of his person, yet still it is equally protected by the law, and it is made a capital offence in the persons who so take the property. The question for you to determine will be, whether the evidence brings it within the charge, either as taken immediately from his person, so as to constitute what is more properly called a robbery from the person, or as taken from his dwelling-house, he being in fear.

The evidence given by James Brook is, that he lives in the parish of Huddersfield, near a place called Far-Town; that on a Sunday night, which was the 29th of November last, about ten o'clock, he was on the outside of his

house, near his door, and that some persons, he cannot say how many, but he believes four, came up to the door to him, and asked him whether he had got a gun. He told them that he never had one. One of them said, that they knew he had a pistol. He told them he had one, but it was nothing good to, meaning that it was worth nothing, and of no use. They were all of them very near him, they bade him walk forward into the house, and upon his doing so, they followed him into the house; they had pistols in their hands, and, according to his expression, challenged to shoot him, meaning, I suppose, that they threatened. The witness says, that they said they wanted a pound or a guinea, or else his life they would take; that he thinks the man, whom he calls James Hey, who stands at the bar, was the man that demanded the pistol; that he told them he had none, and then the same man, who he thinks was Hey, swore he would make him find one, showed him into a chair, and told him he must look into the fire; that he accordingly did so, and that afterwards the man, who he thinks was Hey, bade him go up stairs and find them the pistol; and that he accordingly went up, and two of the other persons went up stairs with him; that there was a candle in his house, which was a-light; that these men had handkerchiefs over their faces; but he says, that that one man, whom he thinks to be Hey, frequently pulled the corner of the handkerchief away; that he had an opportunity of seeing him at those times, while he was in the house, and when occasionally the corner of the handkerchief was pulled up, and that he saw him afterwards before Mr. Radcliffe, the magistrate. Then he says, that when he went up stairs as they had bid him do, and gave one of them his pistol, they had their pistols in their hands; and then he mentions this circumstance, which is mentioned by nobody but himself; that his children were in bed up stairs, and that they were daunted by people coming up, and cried out; and that one of them, who he thinks was Hey, pulled back the curtain, and put his pistol towards the children, saying, that he would blow them to pieces if they were not quiet. They would not have his pistol, for it was good for nothing, and bade him go down stairs; they also went down stairs, and the same man, whom he calls Hey, ordered him to open a cupboard which was there. The witness would not open it, but he told his wife that she might open it, and she accordingly opened it; but Hey had first told him that if he did not open it, he would blow his head off, and the witness told him he hoped he would not do it. When the cupboard was unlocked, the same man bade him pull out the drawer; the witness said he would not pull it out, but that if Hey chose he might pull it out, and accordingly another of the men, he does not know which, pulled out the drawer, and Hey took out a pound note of some Bank or other, he does not know what

Bank it was, and a three-shilling piece, and one shilling. And then Hey (that is the man who he thinks is Hey, for upon a subsequent part of his examination, however in former parts he may have spoken of him with more or less of certainty, the conclusion which at last he comes to is this, that from what he then saw of him, and what he saw afterwards, he believes it was the prisoner Hey, but that he will not undertake to speak positively to his person) afterwards told him he had a good mind to blow his head off, for telling such a confounded lie as that he had no money. Being asked the reason why he bade his wife open the cupboard, he says the reason of it was, that they told him they would kill him if he would not open the door. They told him to keep within the doors two hours, or that he would certainly be shot. He then gives an account of a watch of his, that was hanging at the face of the clock in his house, when these people first came in. He did not see it taken, but in about an hour and a half after they were gone he found the watch was missing. He says, that he himself had never seen, to his knowledge, either of the prisoners before; that he had never seen the prisoner Hey before that night, that he thinks he was the man, but he would not wish to be certain; so that the result of his evidence, as I have stated, is, that he does not wish to be understood as speaking with certainty, but only as expressing his opinion that he was the man.

This is the account of the commission of the offence, as detailed by the prosecutor Brook; and according to these circumstances there can be no doubt as to the indictment applying itself to this property of his, which was so taken. Although he himself or his wife may have opened the door of the cupboard, or the drawer, yet when his property was taken by men coming with arms in their hands, in the manner he describes these persons to have come, at that time of night, pointing their pistols at him, bidding him go into the house, threatening him at different times, and asking him for his arms and his money, it will be a question to be submitted to you, but upon which I apprehend there can be very little doubt, that this property was not parted with willingly by Brook, but that it was in consequence of fear inspired into him by the number of persons who came that night, by the arms they had, and the language they used. And, if so, whether the cupboard door was opened by himself or by his wife, or whether the money was taken out of the drawer with his own hand and given to them, it would be a taking in his house he being put in fear, and not a voluntary giving. Of this there can be very little doubt under the circumstances he has stated; and that will bring it to the question, which I apprehend is the real question, how far the evidence in the case shall satisfy you, that the three prisoners at the bar, or any, and which of them, were the persons who were concerned in the robbery which was committed.

As to that, you have in the first instance, by the evidence of the man himself whose property was so taken, nothing said with respect to two of the prisoners; but as to one of them, Hey, he describes the manner in which he was partly concealed, having a handkerchief over his face, and the opportunity he had of occasionally seeing his face, and his belief that he was the man, but nothing more than his belief, as he wishes not to speak with certainty.

Then they call Joseph Carter, who states that he was one of the four men who went to this house that night. He says, that on a Sunday night, in the month of November, he met the three prisoners at the bar, James Hey, Joseph Crowther, and Nathan Hoyle, at the top of a wood, called Bank House Wood, near Skircoat; that they met by appointment, for the purpose of going to take guns and money, at a place called Far Town; that Hey and Crowther had been and looked out, and Hey told them of some places near there, and they went to those places; that they first met that afternoon about three; that the place called Far Town might be four or five miles off; that James Brook's was one of the houses they went to; that it was after dark when they went to his house; he cannot say what hour it was; but being asked whether it was before twelve o'clock, he says, "Oh, yes, it was before twelve o'clock." Then he says that James Hey, Joseph Crowther, Nathan Hoyle and himself, were the four persons that were there. He understood from the prisoners, Hey and Hoyle, that they were to have been met by two other persons, namely, Edward Crowther and one Mitchell, at the place from which they started that night, namely, Bradley Lane, but that Edward Crowther and Mitchell did not join them at Bradley Lane; that upon not finding them there, he says Crowther said, "As we are come so far, we must not lose our labour, but we must try for ourselves;" and that they accordingly went without those two companions whom they expected to have met there. He says as they were going up a field, there was a man in a garden, and they asked him if that was not a farm-house, and he said it was; that upon that James Hey demanded the man's gun; he said he had not one, except an old piece without a lock, which would be of no use to them. According to the account Brook himself gives, the people asked him whether he had a gun, and he had not one, and he told them he had a pistol, but that it was good for nothing. The account which Carter gives is, that they met this man, and asked him whether he had a gun, and he said he had none, excepting an old piece without a lock, which would be of no use to them; and that the prisoner Hey wished him to let them look at it. Carter then says, that the man had gone into the house upon their first demanding his arms; and he describes the other three men, who he says were the prisoners at the bar and himself, as all armed with pistols; that the man went up stairs; that the prisoner Hey and the

witness Carter followed him up stairs, and that the man shewed a gun to the prisoner Hey, who said that it was nothing good to, that is, it was good for nothing. According to the account given by the prosecutor Brook, he shewed them a pistol; the one speaks of it as a gun, and the other as a pistol. The witness Carter says, that upon that they said they would have money to buy one; that the man turned down stairs, and said he had got no money, and that they began to search, and found a note in a small drawer, near the door in the house-part; he thinks it was in a cupboard, but he is not certain whether the drawer was in a cupboard, or let into the wall; that they took from thence a pound note and a few shillings in silver. He thinks that the prisoner Joseph Crowther was the man that first found them; and then gave them to the prisoner Hey, and that Hey took them. After they had done this, they told the man of the house a guard would be set round the house for two hours, and that if he stirred out within that time, he would be shot. That is the account of the transaction as given by Carter, who was an accomplice, who says he was one of the persons who were there; and though you will observe that it agrees in some of the particulars with the account given of the robbery, as to the things taken away, and the arms demanded (except that one talks of a gun and the other of a pistol) with the account given by James Brook; yet in some of the particulars it varies; and Carter either was not witness to, or he does not at all speak to, some of the expressions and some of the circumstances which are spoken to by Brook himself, and particularly with respect to the children, not a word of which is mentioned by Carter in his account.

Then Carter says, that after they had gone from the house, the prisoner Crowther said that he had taken a watch from thence; that that was the first time that they knew the watch had been taken. James Brook, the man who was robbed, says there was a watch hanging up; that he did not see it taken; and that it was not asked for, but that he found it was missing. Carter says, that they none of them knew the watch had been taken till they had gone away, and then the prisoner Crowther told them he had taken a watch from that house, as well as another watch from another place; and he says, that watch, which Crowther said he had taken, was given to the prisoner Nathan Hoyle, as part of his share of the plunder of that night; that they shared the plunder they had taken that night, and that the (Carter's) share came to fifteen pounds; and that altogether there were four of them went into this house. He describes himself as having been concealed, in a certain degree, by a handkerchief tied over the lower part of his face. He says that James Brook was in the house-part when they searched; and he (Carter) was in the room with him; they were all searching; and he himself was searching

among the rest; that there was a candle (which Brook says also), but he does not believe that that candle was very near where they took the note and the money from; that he himself did not see the note found by Hey, but Hey told him Crowther found it; that he was near at the time; that they did not stay in the house above a few minutes, and that there was a fire in the house as well as a candle. He describes Hey the prisoner as having a handkerchief over his face, not tied in the way his own was, over the lower part of his face and his mouth, but in the way that women sometimes tie handkerchiefs over their heads, as a cap or something of that kind; and he says, that Hey's handkerchief was never removed while he was in the house, that he saw; that there was not a corner down his face, but there was a whole handkerchief, of which a little came down over his face. He then says, that he himself was taken up on suspicion, and then he thought he would tell all about it, having some little hopes (which was his expression), meaning that he had some little hopes of saving himself; and he admits that he did not tell it till then. This is the account given by Carter, who is in every sense an accomplice; and the question with respect to him is, how far that account tallies with the narrative of the transaction as given by the other witnesses, so that you can be satisfied that in the main of his account he tells you the truth.

They next call two other persons, who were not concerned in the robbery, and had no share in it; the two persons alluded to by Carter, as the men who were to have met them at the place from whence they started, to go upon this marauding expedition that night, but who never came to their appointment, never were at the place, and never par took of any of the booty. The first of them is Edward Crowther. He says he lives at Skircoat Green; that the prisoner Joseph Crowther is no relation; that he has known the prisoners James Hey and Nathan Hoyle within a late while, that is of late; that the prisoner Hey asked him and Jonas Mitchell, who is a mechanic, to go out with them that night; and that the object of his asking him to go out was, to receive or get some property to better their circumstances, by going into people's houses, and plundering them. Such he says was the application that Hey made to him and Mitchell to meet them that night, and it does not appear that he then made any great difficulty, or had any scruples in consenting at the time to be of the party. For he says, that he told him he would meet them. He says, that on a week-day, before the Sunday when this was done, Hey had told him they had run over their country, that is, the country in the neighbourhood just whereabout they lived, and he thought there was a very nice place near Fell Grieve, that is, it was a lonely place; that he understood the place they pointed at, and said it was a pity to go there; it was a widow woman's house, who was getting her



livelihood, and it was a pity to go and deprive her of her property, and he pointed out to them some other place; he does not say what. He further says, that on the Sunday, in the evening of which this act was committed, he (Edward Crowther), the prisoner Hey, and the prisoner Nathan Hoyle, together with Jonas Mitchell, were taking a walk soon after dinner, having dined at about twelve; that the prisoner Hey told him he must be sure to attend at Bradley Lane, at seven that evening, to go and plunder those houses they had been talking of before. He says, that no mention was at that time made of any particular house they were to go to, but a house of Mr. Waller's; that after this conversation, he and Jonas Mitchell separated, and returned home, and they did not go that night to Bradley Lane, to keep the appointment; they did not meet them there, but they went part of the way, with a brother of one of them and a child, to take a walk. He adds, that the next day, at his own house, he saw James Hey, when Hey told him they had run to a many places, and cursed him hard for not coming to Bradley Lane; and then he says, he (the witness) threeped it down, that Mitchell and he had been at the place appointed; that is, that when Hey came to upbraid him for not having kept the appointment, he threeped it down, or insisted, that they had gone, but had missed of meeting them. He says, that, in fact, they had gone, with his brother and a little child part of the way, but they had not gone to Bradley Lane end. He says, that Hey told him they had found better places in the dark, than they had set out to look for in the light, and that they had got a deal of money. In a few days after that, he saw the prisoner Nathan Hoyle, who then observed to the witness, that they (himself and Mitchell) had not been there, but that he had, and that they had made great blunders (by which the witness understood that they had tumbled about) in going through so many places in the dark. He is then asked particularly, whether he had been of those different parties travelling about in the dark. He says he had not; that he did not like to venture to take other people's property, and that he did not tell of this before he was taken up, because he had threats held out to him; though he knew, according to his account, what was going on, and had had conversation before-hand, as to the houses they meant to go to, and so on, he says he had never joined them. He says, he himself was taken up on suspicion of this transaction, and that when he came before Mr. Radcliffe, he told the whole to him at once; and he positively says, upon his oath, that he never had been concerned in committing any of these offences, and never was present at the commission of any of them.

The next witness is Jonas Mitchell, the person referred to as having made the appointment with Crowther to meet them. He says the same as Crowther stated, that in the end of

November, on a Sunday after dinner, Nathan Hoyle, James Hey, Edward Crowther, and he, were together; that Hey proposed, that they should meet that evening at Bradley Lane, at seven o'clock, to go and plunder houses, but he does not recollect mention being made of any particular houses they were to go to; that he and Edward Crowther did not go, but they went a part of the way with a brother, and then turned off, and that he saw nothing of any of the prisoners that night; that sometime in the next day, whilst he was at work at Copley Mill, Hey came to him, and said they had had a rare good do the night before, but he never told him what he had got; he only asked the witness, why he had not met him, and the answer he made was, that they had been there, but had missed them. He says that he understood the officers had come to his house, to take him up, and that he went himself to them; and when he came before the magistrate, he told all that he knew about it. He is asked as to the time, and he says he thinks they were taken up a piece of a week after the Sunday when this was talked of, but he is not quite certain whether that was the time or not.

The next evidence is that of Mr. Allison, who acted as clerk to Mr. Radcliffe, for the purpose of taking the account of what the prisoners themselves said before Mr. Radcliffe; and this applies to the examination of the prisoner Crowther. Mr. Allison says, that he was present when the prisoner Joseph Crowther was examined before Mr. Radcliffe, and he produces his examination taken in writing, which he says was taken from the account he gave, as read over to him after it was taken down, was signed by Crowther himself willingly, without any promises or threats being used, and then signed by Mr. Radcliffe; so that it is an account voluntarily given by him.

The part, which it is material to state to you, of the examination of the prisoner Crowther, is this: "When we had done there, we went to another place. As we came to it, James Hey said, this is a likely place, and it will pay the two men who should have met us. We went in, and demanded a gun first; he said he had none, nor a pistol; we then demanded a pound note, he said he had not one; he shewed an old gun, but they would not have it, but insisted upon having a pound note; he then searched in a cupboard, and found a pound note or something, but I do not know what, and some silver;"—then afterwards he says—"when we were at James Hey's he turned out all he had, and we divided it; we had about thirteen pounds apiece." This is read, you see, for the purpose of giving an account of what the prisoner Crowther himself said, and that you may see it tallies with the account of the man who was robbed, and the account given by Joseph Carter, who professes himself to have been an accomplice, and to have been present at the time. So far as Crowther may mention the name of any other pri-

soners as being there, any confession of his cannot affect them; it can only affect himself, shewing he had been there; and with respect to himself, what a man says when he is supposed not to be talking idly, and when he is before a magistrate, and is aware that what he says may be used against him, is strong evidence against himself; but what he says charging any other persons, ought not to be used as evidence against those other persons, because it is no admission on their part. He says not only that he was present at this house, the robbing of which he gives an account of, but he speaks to their having demanded a gun first, which the man denied having, or a pistol; then their demanding a pound note, and his saying that he had none; his shewing them an old gun which they would not take, and their insisting upon having money; and then taking a pound note and some silver out of a cupboard, and that afterwards they divided the plunder, and he had about thirteen pounds for his share. This is the evidence, gentlemen, on the part of the prosecution.

Two witnesses have been called to speak particularly to the character of the prisoner Hey; the one is Mr. Robert Thomas Bradbury, who lives at Copley Mill, which has been mentioned to you as the place where one of the persons was working. He says, that he has known the prisoner, Hey, for three years; he knew his father and his family long before, that the father is a reputable man as any in the county; that he does not know so much of the son, but that he never heard any thing amiss of the son till these transactions took place.

Then Stephen Broadbent, a woollen manufacturer, in whose employ the prisoner Hey was, is called. He appears to have known much more of the father than of the son. He says he has known him from a child, and that he never knew any thing bad of him till these unhappy times. That is the account which has been given of this man Hey. As to the others, they say that whoever they had that could have spoken to their characters, are gone away.

It is upon this evidence you are to decide. You will compare the account given by the man himself who was robbed, of the transactions which took place that night, keeping in your mind, that he speaks only to four persons being there, not being able to speak at all to the person of any one of them, except that of Hey the prisoner. He has given you an account of what part of Hey's countenance he had an opportunity of seeing during the time he was there, and of his belief upon the subject from what he observed, but he wishes not to express himself with certainty. Then you have the account of Joseph Carter, who was, strictly speaking, an accomplice in this fact, who professes to be one of the four, and who has related the circumstances which passed that night, which you have had an opportunity of comparing with the account given by the

man who was robbed, and of judging from that comparison, whether the account he has given in other particulars is a true account, so as to be induced to believe that he is speaking the truth in other circumstances, and to rely upon him when he states who were his companions. The next species of evidence is that of Edward Crowther and of Mitchell, who were not partakers in this robbery. According to their account they were not present at it, and could not have been included in this indictment. They had been solicited to meet that night, not for the purpose of going to any particular place, or of committing any particular felony, but for the purpose of setting off from thence upon a plundering expedition; for it seems as if they were going into a particular part of the country, but had not marked out the particular houses they were going to. They failed in keeping that appointment; whether their hearts failed them before they came there, or what it was that diverted them from it, we do not distinctly know; but they say they had been solicited by Hey and Hoyle, with whom they had taken a walk that same Sunday, and had consented, yet they never went.

They speak to Hey and Hoyle as the persons who had agreed to meet them that night at Bradley Lane end, and they further add the account which the same persons gave them the next day or the day after. One of them speaks to Hey having called upon him on Monday, and accused him for not having joined them the night before, and giving him an account that they had had good luck, and that they had found better places in the dark than they had set out to go to in the light. And Edward Crowther speaks also to Nathan Hoyle, the other prisoner, in a few days afterwards coming and telling him that he had been there, and that they had blundered in going about among these houses in the dark. Mitchell speaks in the same manner of having seen them the day before, when they made the appointment to go together; he says they never met, though they set out to go there, for that they went to Edward Crowther's instead of going; and he says that the next day, Monday, Hey came to him at the mill where he worked, and told him they had had a rare good do, but never told him what they had got. He does not speak to any conversation either with Hoyle or with Crowther.

You, gentlemen, will consider this evidence, and will see how far you are satisfied that it sufficiently applies to fix either of the three prisoners as being three of the four who are spoken of as having committed this robbery at Brook's house; for that it was a robbery, under the circumstances, falling under one or both counts of the indictment, there is no doubt. The only question is, who were the persons who committed it. If you are satisfied that all the prisoners were guilty, you will find them all guilty. If you are satisfied as to some, and not as to others, you will draw the distinction.

The jury retired at twenty minutes after twelve, and returned in five minutes, finding James Hey, Joseph Crowther, and Nathan Hoyle, GUILTY.

THE KING  
against

DAVID MOORHOUSE AND JOHN SMITH.

The prisoners were arraigned, and pleaded Not Guilty, to an indictment charging them with burglary in the dwelling house of William Savage, at Kirk-Burton, on the 11th of June, and stealing divers articles therein.

Mr. Park.—May it please your Lordships; Gentlemen of the Jury;—I do not give my learned friend, Mr. Richardson, the trouble of repeating the summary of this indictment to you. This is the last indictment before their lordships and you for a felony, upon which I mean to proceed. But I do not mean to give any evidence upon it. And I have reserved this to the last, that not one word I state to you might be supposed to influence the conduct of yourselves or any other jury, upon the trial of any other felony. I have been extremely anxious not to put any person upon his trial for so serious an offence as felony, without at least believing, from the documents laid before me, that there was a probable ground of conviction. With respect to the men at the bar, although I think there was a strong ground of suspicion against them, the result of my fair and honest judgment is, that probably, after a considerable length of time consumed in their trial, the termination, in their lordships' judgment and in yours, would be, a verdict of acquittal.

Gentlemen, I have no more cases of felony to bring before you. In the name of the country, I thank you for your attendance; it has been a most painful one, undoubtedly: but I hope and trust what has been done here will restore peace and comfort to this deluded county; and that those within these walls, and all, in every part of the kingdom, to whom the account of what has passed here may come, will be induced to abstain from the commission of the like offences; and will be satisfied, that lives of honest industry are far preferable (considered even in a temporal view) to lives of rapine, violence, and outrage against their neighbours, and to the assassination of honest and innocent individuals.

Mr. Justice *Le Blanc*.—Gentlemen, no evidence being offered against the prisoners, you will find them Not Guilty.

The jury immediately acquitted the prisoners.

THE KING  
against

JAMES STARKET.

This prisoner being indicted for a misde-

meanor, in having incited two persons, on the 5th of September, to blow up the mill of William Cartwright, at Liversedge, traversed the indictment, and was discharged on bail, to try his traverse, at the next assizes.

Mr. Park.—My lords; There are still remaining in your calendar 17 prisoners, who stand capitally indicted for different offences. Upon looking through a list of their cases with all the accuracy in my power, assisted by my learned friends, I discover that three of the ringleaders in all those offences have already suffered the penalty of the law; and two others of those who are involved in some of those indictments, have also been capitally convicted; I will not state their names, because I wish to create no prejudice. I further observe, that two others of those persons were acquitted upon a former trial on Saturday night, but I do not think that that circumstance ought to influence my judgment upon the present occasion, so as to render it my duty to put them upon their trial again. But, inasmuch as I consider that those whose cases remain, including the two who were acquitted on Saturday, have been, to a considerable degree, the dupes of designing persons, and have been led on by the five persons to whom I have alluded, I am in hopes that I shall not be doing wrong in permitting them to be discharged on giving bail to appear at any time when called on by the Crown. And I do assure your lordships, that if they will conduct themselves as honest and industrious subjects, they never shall be called upon. I trust that we shall very materially benefit this county by the course we have taken, and that this lenity and forbearance on the part of the Crown (for so the prisoners must consider it) will have a powerful effect on their minds.

Mr. Baron Thompson.—It must be entered as done by application on the part of the Crown, and the consent of the prisoner's counsel, naming the counsel, and of the prisoners themselves.

THE KING  
against

SAMUEL BOOTH, GEORGE BROOK, of *Dalton*,  
GEORGE LODGE, and JOSEPH SCHOFIELD.

These prisoners, together with George Mellor, Thomas Smith, William Thorpe, Jonathan Dean, and John Walker, were indicted for having, on the 23rd of February last at Linley, broke seven shearing-frames, twenty-four pairs of shears, and one shear-board, of John Hirst, being tools used in the making of woollen goods, contrary to the stat. 22 Geo. 3, c. 40,

The same nine persons, except Samuel Booth, were also indicted for a similar offence against the tools of James Balderstone at Linthwaite, on the same day.

## THE KING

against

JAMES VARLEY, JOSEPH THORNTON, GEORGE BROOKS, GEORGE BEAUMONT, ABRAHAM ARMITAGE, SAMUEL HATCH, BENJAMIN HINCHLIFFE, JOHN TAYLOR, and ROBERT FETTON.

These prisoners, together with George Melior, were indicted for burglariously breaking the dwelling-house of William Newton at Foolstope, on the 18th of May, and stealing three guns and one bayonet, his property.

## THE KING

against

JAMES VARLEY, CHARLES THORNTON, JAMES BROOK, JOHN BROOK, and GEORGE BROOK, of Lockwood.

These prisoners were indicted for burglariously breaking the dwelling-house of Joshua Brook at Wooldale, on the 1st of May, and stealing one gun and one pistol.

The above-named seventeen prisoners, being set to the bar, respectively entered into recognizance, each with two sureties, conditioned that they should appear and answer to the indictments found against them, at the next session of Oyer and Terminer and general gaol delivery for the county of York, after they should be thereunto required by the Crown, and in the mean time should keep the peace, and be of good behaviour.

*Foreman of the Jury.* — My lords; the jury wish to know whether their services are dispensed with?

*Mr. Justice Le Blanc.* — The Court will be able to dismiss you, gentlemen, from your attendance now; but it will not be in the power of the Court to discharge you. If any circumstances, during the time limited in our commission, should render it necessary to call you together again (which will not be done, unless there is something creating an immediate pressure) you will have notice. You cannot be absolutely discharged; but we trust there will be no further occasion for the exercise of those duties which you have so well discharged.

The Court then proceeded to pass sentence upon the prisoners convicted; beginning with the minor offences.

*Mr. Baron Thompson.* — John Eadon, John Baines the elder, Charles Milnes, John Baines the younger, Wm. Blakeborough, and George Duckworth, you, the several prisoners at the bar, have been convicted of an offence, which the wisdom of the legislature has made a felony. You, John Eadon, and John Baines the elder, are convicted of having administered

to different persons an unlawful oath, an oath tending to bind the persons taking it (and intended by you that it should so bind them) to join in a society of persons to disturb the public peace, to observe secrecy in that association, and never to declare what they should know respecting that confederacy. You, the other four prisoners at the bar, have been convicted of being present, aiding and consenting to the administering of that unlawful oath by the prisoner John Baines the elder; and your offence is of the same degree as that of the man who actually administered that oath.

In the course of the very serious investigations, about which we have been so long employed in this place, it has but too plainly appeared what have been the dreadful effects of such oaths so taken. They certainly have been the means of inducing many unwary persons to enter into these illegal associations, and to continue in them; the effect of which associations and of which engagements in support of them, has been such as we have unfortunately witnessed in the evidence laid before us in the course of these inquiries; they have tended to the disturbance of the public peace in the most populous manufacturing part of this county; they have induced large bodies of men to engage in the most tumultuous proceedings, to attack the houses, plunder the property, begin to demolish the mills, and to destroy the machinery employed in those mills; nay, they have had the effect of going much further, and have even induced persons to proceed to the horrid crime of murder. Strictly speaking, the administering of these oaths does not make you in law accessories to those offences; but still they must be heavy upon your consciences, if you have any sense of right or wrong remaining.

You, John Eadon, seem to have been long practised in so administering these oaths. To the person to whom you administered it, you gave instructions to get that oath by heart, that he might qualify himself to be the administrator of it; and to a person who called upon you shortly after you had so administered that oath, you fully explained to what it was intended to bind the parties, not scrupling to admit, that the intention of it was, to overturn the very government of this country.

You, John Baines the elder, have made it your boast that your eyes have been opened for three and twenty years; and you also declared your sentiments with respect to government, and with respect to no government, plainly (according to what we have collected from the evidence) preferring anarchy and confusion to order and subordination in society.

Such is the offence of which you, the prisoners at the bar, stand convicted; and the punishment which the legislature has provided for that offence is certainly not a severe one, if we consider only what a profanation of religion it is, to make such a daring appeal to the Almighty to witness your desperate engage-

ments, and what are the horrid consequences that follow from it. If the offence committed by one of you, that is, by John Baines the elder, of administering this oath, had been committed only two days later than it was, the administering of that oath would have amounted to a capital felony; for the legislature, seeing that the punishment was hardly sufficient for offences of such magnitude, have enacted, that to administer any such oath, whereby a person is held bound to commit any murder or other capital felony, shall itself amount to a capital offence. That act of parliament, however, did not take place till a day after you had committed this offence.

Under all these circumstances, we feel it our duty to pronounce that judgment upon you which the law has provided, and in the extreme in which it is provided. The judgment of the Court upon you, the prisoners at the bar, is, That you be severally transported beyond the seas for the term of seven years."

The prisoners capitally convicted being next put to the bar, and asked what they had to say, why sentence of death should not be passed upon them, prayed that their lives might be spared.

Mr. Baron *Thompson*.—John Swallow, John Batley, Joseph Fisher, John Lumb, Job Hey, John Hill, William Hartley, James Hey, Joseph Crowther, Nathan Hoyle, James Haigh, Jonathan Dean, John Ogden, Thomas Brook, John Walker, you, unhappy prisoners at the bar, stand convicted of various offences, for which your lives are justly forfeited to the injured laws of your country. You have formed a part of that desperate association of men, who, for a great length of time, have disturbed the peace and tranquillity of the West Riding of this country. You have formed yourselves into bodies; you have proceeded to the most serious extremities against the property of many individuals. The cause of your so associating appears to have been, a strange delusion which you entertained, that the use of machinery in the woollen manufacture was a detriment to the hands that were employed in another way in it; a grosser delusion never could be entertained, proceeding probably from the misrepresentations of artful and designing men, who have turned it to the very worst purposes which riot and sedition could produce. You have proceeded to great extremities. The first object, perhaps, seems to have been that of your procuring arms, in order to carry on your nefarious designs. With that view, it seems, that some of you went about inquiring for such arms at different houses, and getting them wherever you could find them.

But not stopping there, and not contenting yourselves with getting what arms you could lay your hands upon, you proceeded to plunder the habitations with a great degree of force, and took from them property of every descrip-

tion, which you could find in those houses. An offence of that nature is brought home, and sufficiently established against you the prisoners John Swallow, John Batley, Joseph Fisher, John Lumb, Job Hey, John Hill, William Hartley, James Hey, Joseph Crowther, and Nathan Hoyle.

You the prisoners, Job Hey, John Hill, and William Hartley, did upon the occasion, when you went to the house of your prosecutor, carry away certainly nothing but arms, but you carried them away with great terror, and under circumstances which were sufficient unquestionably to make him deliver what he had. The other prisoners, whose names I have last recited, have been concerned in breaking a dwelling-house in the night time, some of them getting notes, money, and other things; and the last prisoners, James Hey, Joseph Crowther, and Nathan Hoyle, for robbing a person in his dwelling-house.

The evidence, that has been given against you all, was too clear to admit of any doubt; and you have all been convicted of these offences upon the most satisfactory evidence.

You, the other prisoners, James Haigh, Jonathan Dean, John Ogden, Thomas Brook, and John Walker, have been guilty of one of the greatest outrages that ever was committed in a civilized country. You had been long armed and organized, you had assembled upon this night, when the mill of Mr. Cartwright was attacked; you had assembled at the dead hour of night in great numbers; you had formed yourselves into companies under the command of different leaders; you were armed with different instruments of offence, with guns, with pistols, with axes, and with other weapons; you marched in military order and array to the mill, which was afterwards in part pulled down; you began there your attack with fire-arms, discharged into that mill, and kept up a most dreadful fire, and at the same time applied the instruments, which you had brought there, of a description calculated to do the worst of mischief, in beginning to demolish the mill, intending, as it is obvious, to do also mischief to and to demolish the machinery which that mill contained. The cries and exclamations that proceeded from this riotous and tumultuous mob thus assembled, of which you formed a very powerful part, were such as were enough to alarm a man of less firmness than that man possessed, who was the owner of the mill so attacked. Your cry was, "Get in, get in, kill them all!" and there is but little doubt, it is to be feared, that if you had made good your entry into that mill, these threats would have been put into execution, and that the mischief done would hardly have been confined to the machinery which was there. The courage and resolution, however, which that individual displayed, had the effect of making you desist at that time from the attack, and two of your wretched companions paid the forfeit of their lives on that occasion.

It is but too manifest that it was the defeat of you and your other wicked confederates, that afterwards occasioned that fatal attack upon the person of another gentleman, by which he was assassinated and murdered. It was upon that occasion that the plan of that assassination was laid, and too fatally put into execution. The persons immediately concerned in that murder have suffered the punishment which the law inflicts, and a similar fate is about to await you, prisoners at the bar.

There is one of you, John Lumb, who have received a recommendation from the jury in your favour. A discriminating jury thought that they have seen circumstances in your case, which distinguished it from the case of the rest of your fellows in that indictment; and they have, in their wisdom, recommended you to mercy. It is possible that that mercy may be shewn to you, upon a representation elsewhere, and it is possible that your life may be spared. Whatever becomes of you after that, it is to be hoped and trusted, if that mercy should be extended to you, that you will make a proper use of it.

For the rest of you, prisoners, I wish I could discover any circumstances in your cases, that would at all warrant us in raising an expectation that the sentence which is about to be pronounced can be mitigated. It is of infinite importance, however, that no mercy should be shewn to any of you, the other prisoners. It is of importance also, that the sentence of the law for such evil works should be very speedily executed; and it is but right to tell you, that you have but a very short time to remain in this world. It is to be hoped that the forfeit of your lives, which you are about to pay, may operate as an example to all who have witnessed your trial and your condemnation, and to all without these walls, to whom the tidings of your fate may come, to be cautious how they engage in any such illegal confederacies, as you have unfortunately entered into. For they may rest assured, that it never will be in their power to say (and they will learn that from your sad example) "Hitherto will I go, and no further." They cannot stop in that career, in which they shall have once engaged, till death shall overtake them, in the shape of punishment.

In the awful situation in which you, prisoners, stand, let me seriously exhort you to set about the great work of repentance, and to spend the very short time that you must be allowed to remain in this world, in endeavouring to make your peace with your God, and to reconcile him by deep repentance. A full confession of your crime is the only atonement you can make for that which you have committed. Give yourselves up to the pious admonitions of the reverend clergyman, whose office it will be to prepare you for your awful change; and God grant, that, worthily lamenting your sins, and acknowledging your wretchedness, you may obtain of the God of all mercy perfect remission and forgiveness.

Hear the sentence which the laws of man pronounce upon your crimes. The sentence of the law is, and this court doth adjudge, that you, the several prisoners at the bar, be taken from hence to the place from whence you came, and from thence to the place of execution, where you shall be severally hanged by the neck until you are dead. The lord have mercy upon your souls!"

Joshua Haigh, John Shore, William Whitehead, Cornelius Hobson, Benjamin Siswick, Thomas Green, William Anson, Mark Hill, George Rigge, Charles Cockcroft, John Walker, of Salford, James Dyson, and Samuel Harling, against whom there were no indictments, for the reason stated by Mr. Park on Thursday last,\* together with the two accomplices Benjamin Walker and Joseph Carter, who were admitted evidence for the Crown, were discharged by proclamation.

Saturday, 16th January, 1813.

The several prisoners, who received sentence of death on Tuesday, with the exception of John Lumb, were executed in pursuance of their sentence.

Lumb received his Majesty's pardon, upon condition of being transported for life.

In continuance of the system, which was pursued throughout these prosecutions, of tempering justice with mercy, the government, as soon as the capital convicts had suffered the punishment justly due to their crimes, issued a Proclamation on the 18th of January; which was succeeded, after a short interval, by another, on the 1st of February; both of which, being immediately connected with the preceding trials, are subjoined.

By His Royal Highness The PRINCE of WALES, REGENT of the United Kingdom of Great Britain and Ireland, in the Name and on the Behalf of His Majesty.

#### A PROCLAMATION.

GEORGE P. R.

Whereas it hath been represented unto us, that divers unfortunate and misguided persons, who have been induced by the artifices of wicked and designing men to take some oath or engagement, contrary to the acts of parliament in that behalf made in the 37th and 52nd years of his majesty's reign, or one of those acts, or to steal ammunition, fire arms, and other offensive weapons, for the purpose of committing acts of violence and outrage against the persons and property of his majesty's peaceable and faithful subjects, and who are not yet charged with such their offences, may be willing and desirous to make a disclosure or confession of such their offences, and to take the oath of

\* See p. 1063.

allegiance to his majesty, upon receiving an assurance of his majesty's most gracious pardon for such their offences; We, therefore, acting in the name and on the behalf of his majesty, being willing to give such assurance upon such conditions as are hereinafter mentioned, and earnestly hoping that the example of the just and necessary punishments which have been inflicted in the counties of Lancaster, Chester, and York, upon certain offenders lately tried and convicted in those counties, may have the salutary effect of deterring all persons from following the example of their crimes by a renewal of the like atrocities, have thought fit, by and with the advice of his majesty's privy council, to issue this proclamation; and as an encouragement and inducement to his majesty's misguided subjects to relinquish all disorderly practices, and return to their due and faithful allegiance to his majesty, we do hereby, acting in the name and on the behalf of his majesty, promise and declare, that every person not having been charged with any of the offences hereinbefore mentioned, who shall, previous to the first day of March next ensuing, appear before some justice of the peace or magistrate, and declare his offence, and the oath or engagement by him taken, and when and where the same was taken, and in what manner, or the ammunition, fire arms, or other offensive weapons by him stolen, and when, where, and from whom the same were stolen, and the place where the same were deposited, and also, according to the best of his knowledge and belief, the place where the same may be found, and who shall at the same time take before such justice of the peace or magistrate the oath of allegiance to his majesty, shall receive his majesty's most gracious pardon for the said offence; and that no confession so made by any such person shall be given in evidence against the person making the same in any court or in any case whatever.

Given at the Court at Carlton House, the 18th day of January 1843, in the 53rd year of His Majesty's reign.

God Save The King.

By His Royal Highness The PRINCE of WALES, REGENT of the United Kingdom of Great Britain and Ireland, in the Name and on the Behalf of His Majesty.

#### A PROCLAMATION.

GEORGE P. R.

Whereas we have beheld, with the deepest regret, the daring outrages committed in

those parts of England wherein some of the most important manufactures of the realm, have been for a long time carried on: And being firmly persuaded that such outrages have been, in a great degree, occasioned by the wicked misrepresentations and artifices of ill-designing persons, who have deluded the ignorant and unwary, through the specious pretext of procuring additional employment and increased wages for the labouring manufacturers, by the destruction of the various kinds of machinery now most beneficially employed in the manufactures of this kingdom, and have thus seduced them to enter into unlawful associations, and to bind their consciences by oaths and engagements not less injurious to their own welfare, than destructive of the good order and happiness of society; and seeing that the extent and progress of the trade and manufactures of this country, which have been continually advanced by the invention and improvement of machinery, afford the best practical demonstration of the falsehood of all such pretences; we, therefore, acting in the name and on the behalf of his majesty, being anxious by every means in our power to bring back his majesty's misguided subjects to a just sense of their own individual interests, as well as of their duty to his majesty, and of the regard which they owe to the welfare of the community, have thought fit, by the advice of his majesty's privy council, to issue this proclamation; and we do hereby, in the name and on the behalf of his majesty, exhort all his majesty's loving subjects strenuously to exert themselves in their several stations to prevent the recurrence of those atrocious combinations and crimes, by which the public peace has been so long disturbed, and the persons and property of individuals endangered and destroyed; and which have so justly drawn down upon the offenders the severest penalties of the law. And we do more especially warn those, who may be exposed to such seductions, against the danger of binding themselves by illegal oaths and engagements to obey the commands of secret directors, who, keeping themselves aloof, involve their deluded associates in all the guilt and peril of violence, robbery, and murder. And we do further, in the name and on the behalf of his majesty, earnestly recommend and enjoin his majesty's loving subjects, whenever it shall be found necessary, to have recourse to the salutary measures which the wisdom of parliament has provided for the protection of persons and property. And we do further exhort the proprietors of machinery, not to be deterred from continuing the use and employment of the same, but vigilantly and strenuously to exert themselves in the maintenance and de-

fence of their property, and in the prosecution of their lawful and meritorious callings, in the full persuasion that due watchfulness and resolution, exhibited in the first instance on their own part, will, as has been proved by recent experience, most effectually prevent or repel such unlawful aggressions. And we do, further, in the name and on the behalf of his majesty, charge and command all sheriffs, justices of the peace, mayors, bailiffs, constables and other civil officers, to continue their utmost vigilance and activity for the preservation of peace and good order, the prevention of nightly and other unlawful meetings of ill-designing and wicked men, and for the defence of his majesty's peaceable and industrious subjects from the secret machinations and open attacks of the violators of private

property, and the disturbers of the public tranquillity: trusting, as we do, that by the constant and active exertions of all well-disposed men, the misguided may be reclaimed, and the mischievous kept in awe, without the necessity of recurring to the chastisements of the law, which it will be our duty, as guardian of the general peace and prosperity of the realm, strictly to enforce, if unhappily the renewal of such atrocities, as we have lately had to deplore, should again call for the infliction of just and exemplary punishment.

Given at the Court at Carlton House, this first day of February 1813, in the 53rd year of His Majesty's reign.

God Save The King.

691. Trial of Mr. HUGH FITZPATRICK for a Libel upon his Grace the Duke of Richmond, Lord Lieutenant of Ireland; tried at the Bar of the Court of King's Bench, Dublin, on Saturday February 6th: 53 GEORGE III. A. D. 1813.\*

COURT OF KING'S BENCH.

Saturday, 6th of February, 1813.

THE KING

against

HUGH FITZPATRICK.

This was an information Ex Officio, filed by the Attorney General; and came on to be tried this day at the bar of the Court of King's Bench.—It was as follows:—

County of the City of } BE it remembered  
Dublin, to wit. } that the right hon.

Wm. Saurin attorney general of our lord the king who for our said lord the king in this behalf prosecutes in his proper person comes into the court of our said lord the king before the king himself at Dublin in the county of the city of Dublin on the sixth day of November in the same term and for our said lord the king gives the court here to understand and be informed that Hugh Fitzpatrick, late of Capel-street in the county of the city of Dublin printer, being a wicked malicious and ill-disposed person and wickedly and maliciously contriving and intending to scandalize traduce and vilify his grace the duke of Richmond lord lieutenant of Ireland and his majesty's ministers in Ireland acting under the authority of the said lord lieutenant and to stir up and excite discontent amongst his majesty's subjects

professing the Roman Catholic religion in Ireland on the Nineteenth day of June in the year of our lord 1812 at Capel-street aforesaid in the county of the city of Dublin aforesaid in order to fulfil and bring to effect his most wicked and malicious intentions aforesaid wickedly and maliciously did publish and did cause to be published in a certain book or pamphlet entitled "A Statement of the Penal Laws which aggrieve the Catholics of Ireland, with Commentaries, in two parts, part 2," a certain false seditious and malicious libel of and concerning his grace the said duke of Richmond lord-lieutenant of Ireland and his majesty's ministers in Ireland acting under the authority of the said lord-lieutenant of the tenor and effect here following (that is to say), "At the Summer assizes of Kilkenny, 1810, one Barry was convicted of a capital offence, for which he was afterwards executed. This man's case was truly tragical, he was wholly innocent, was a respectable Catholic farmer" (meaning a farmer professing the Roman Catholic religion), "in the county of Waterford, in good circumstances; his innocence was clearly established in the interval between his conviction and execution, yet he was hanged, publicly avowing his innocence!!!" "There were some shocking circumstances attending this case, which the duke of Richmond's administration" (meaning the administration of the said duke of Richmond lord-lieutenant of Ireland and his majesty's ministers in Ireland acting under the authority of the said lord-lieutenant) "may yet be invited to explain to parliament" (meaning

\* From the short-hand report of W. Ridgeway, esq., barrister at law.



to insinuate and cause it to be believed that because the said Barry was a person professing the Roman Catholic religion the said duke of Richmond lord-lieutenant of Ireland with the advice of his majesty's ministers in Ireland acting under the authority of the said lord-lieutenant had determined that the said Barry should not obtain his majesty's pardon and had accordingly suffered the said Barry to be executed as a felon though the innocence of said Barry was established to the knowledge of the said lord-lieutenant and ministers)—in contempt of our said lord the king and his laws to the evil example of all others in like cases offending and against the peace of our said lord the king his crown and dignity.

And the said attorney-general for our said lord the king further gives the court here to understand and be informed that the said Hugh Fitzpatrick being such person as aforesaid and wickedly and maliciously contriving and intending to scandalize, traduce and vilify his grace the duke of Richmond lord-lieutenant of Ireland and his majesty's ministers in Ireland acting under the authority of the said lord-lieutenant and to stir up and excite discontents amongst his majesty's subjects professing the Roman Catholic religion in Ireland on the 19th day of June in the said year of our Lord 1812 at Capel-street aforesaid in the county of the city of Dublin aforesaid in order to fulfil and bring to effect his most wicked and malicious intentions last aforesaid wickedly and maliciously did publish and did cause to be published in a certain book or pamphlet intitled "A Statement of the Penal Laws which aggrieve the Catholics of Ireland, with Commentaries, in two parts, part 2," a certain false seditious and malicious libel of and concerning his grace the said duke of Richmond lord-lieutenant of Ireland and his majesty's ministers in Ireland acting under the authority of the said lord-lieutenant of the purport and effect here following, that is to say, "At the Summer assizes of Kilkenny, 1810, one Barry was convicted of a capital offence, for which he was afterwards executed. This man's case was truly tragical, he was wholly innocent, was a respectable Catholic" (meaning a farmer professing the Roman Catholic religion), "in the county of Waterford, in good circumstances; his innocence was clearly established in the interval between his conviction and execution, yet he was hanged, publicly avowing his innocence! There were some shocking circumstances attending this case, which the duke of Richmond's administration" (meaning the administration of the said duke of Richmond lord-lieutenant of Ireland and his majesty's ministers in Ireland acting under the authority of the said lord-lieutenant) "may yet be invited to explain to parliament" (meaning to insinuate and cause it to be believed that because the said Barry was a person professing the Roman Catholic religion the said duke of Richmond lord-lieutenant of

Ireland with the advice of his majesty's ministers in Ireland under the authority of the said lord-lieutenant had determined that the said Barry should not obtain his majesty's pardon and had accordingly suffered the said Barry to be executed as a felon though the innocence of the said Barry was established to the knowledge of the said lord-lieutenant and ministers)—in contempt of our said lord the king and his laws to the evil example of all others in like cases offending and against the peace of our said lord the king his crown and dignity. Whereupon the said attorney-general for our said lord the king who in this behalf prosecuteth prays the consideration of the Court here in the premises and that due process of law may be awarded against him the said Hugh Fitzpatrick in this behalf to make him answer to our said lord the king touching and concerning the premises aforesaid.

And the said Hugh Fitzpatrick by James Hughes his attorney, comes and defends the wrong and injury when and soforth and says he is not guilty of the premises in manner and form as the said William Saurin hath above thereof informed against him and of this he puts himself upon the country.

The sheriffs of the city of Dublin delivered in a panel of the Jury, which was called over.

John Lindsay, set by on the part of the crown.

Alexander Jaffray,

Mr. O'Connell.—My lord, I beg to ask this gentleman whether he has declared any opinion upon the subject of this trial.

Mr. Jaffray answered, that he did not think he had: he was thereupon sworn.

Peter Roe,

Mr. Burrows.—I must ask this gentleman the same question; although I personally know him, and consider him highly respectable, and to whom I would willingly submit any case for his decision, as a juror, but in discharge of my present duty, I am not to know any individual on the panel. I ask you, Mr. Roe, have you ever declared any opinion upon the subject of this trial.

Mr. Roe.—I do not know what the subject of the trial is; I thought I had been summoned on a special jury.

Mr. Burrows.—It is a prosecution for a libel, alleged to be contained in a book intitled "A Statement of the Penal Laws, which aggrieve the Catholics of Ireland, with Commentaries."

Mr. Roe.—I have never seen it, nor given any opinion about it.

Mr. Roe was thereupon sworn.

Mr. Justice Day.—These objections ought not to be made to the jurors upon conjecture.

Lord Chief Justice Denham.—The party taking them ought to be prepared with some evidence to support them.

Mr. Burrows.—My lords, counsel do not act from their own knowledge; they follow the instructions given them; and with respect to evidence, I know no better witness than the juror himself.

William Sparrow,

Mr. *Burrows*.—My lords, I am instructed, that this gentleman has expressed an opinion upon the subject.

Mr. Justice *Ostrove*.—Perhaps it may save time to permit you to ask the question; as if the gentleman denies the fact, you may not proceed further.

Mr. Justice *Daly*.—That may produce some inconvenience, as a juror who wishes to avoid being sworn, has only to say he had given an opinion.

Mr. *Burrows*.—Permit me to ask you, Mr. Sparrow, have you ever expressed any opinion upon the subject of this trial?

Mr. Sparrow.—I do not know what the subject of the trial is.

Mr. *Burrows*.—It relates to a passage in a book, intituled "A Statement of the Penal Laws, &c."

Mr. Sparrow.—I have never declared any opinion in respect of it.

Edward Clibborn, set by on the part of the crown.

Richard Litton, sworn.

Thomas Rochfort, sworn.

Thomas Prentice,

Mr. *Burrows*.—Have you, sir, ever declared any opinion respecting this book?

Mr. Prentice.—I never read the book, nor ever had it in my hand.

Edward Rice, sworn.

James Chambers, sworn.

Richard Darling, set by on the part of the crown.

William Colville, junr., sworn.

Charles Pentland, sworn.

John Hancock Stanley, sworn.

Francis Tempest Brady, set by on the part of the crown.

John Fox, set by on the part of the crown.

Bladen Swinny, sworn.

#### THE JURY.

Alexander Jeffray,

Peter Roe,

Wm. Sparrow,

Edward Rice,

James Chambers,

Wm. Colville, junr.

Richard Litton,

Thomas Rochfort,

Thomas Prentice,

Charles Pentland,

John Hancock Stan-

ley,

Bladen Swinny.

Mr. Kemmis stated the information and plea.

Mr. *Attorney General*.—My lords and gentlemen of the jury; this is an information filed by me, *ex officio*, as attorney-general, against the defendant, Hugh Fitzpatrick, as the printer of a libel, which has been stated to you from the pleading. It is a libel upon his grace the duke of Richmond, and the government of Ireland; and I am sorry to be obliged to state, that it appears to me, and I am sure will appear to you, to be one of the most mischievous and malignant libels, that ever disgraced the Irish press.

This is not an ordinary libel; it is not a

sudden effusion of faction, and malignity, sent in a hurry to a daily newspaper; but it is contained in a very elaborate work, prepared with extreme art and deliberation. It is contained in the second part of that work, which came out at a considerable distance of time after the first part of the same had been published. It is intituled "a Statement of the Penal Laws, which aggrieve the Catholics of Ireland, with Commentaries." The number of grievances, which are alleged, in this book, to exist, are found sufficient to fill two volumes octavo. With the particulars of this statement of alleged grievances, I do not mean to trouble you, at this day. If there be any part of it, which can be of advantage to the defendant in explaining the publication, he will have liberty to resort to it—but I shall call your attention more particularly to that part in which the libel, upon which you are to decide, is contained; and I shall do that for the purpose of removing any cavil or doubt, as to the meaning and intent—the evil and mischievous purpose for which this libel was calculated.

Gentlemen, it forms part of what is stated to be the 9th Chapter of the second part of this Statement of the Penal Code, intituled, "Of the Laws which aggrieve the Catholics; touching the administration of Justice and Trials by Jury"—No doubt, to us all, the most important branch of civil government. If the laws be not duly and equally and impartially administered to the high and low—to the poor and to the rich—to the Catholic and to the Protestant, I will admit, that the great ends and purposes of government—in- indeed of civil society itself—are not answered; or fulfilled. This book, however, has the audacity to represent, without any regard to truth or decency, that the administration of justice by judges and juries is partial; and the object of it is, to impress upon the mind of the Roman Catholic population of Ireland, that they have not the benefit of the laws, and cannot obtain justice, under the present constitution and government of the empire.

This is so grossly and abominably false, that it carries with it, to every candid mind, its own refutation, and I should willingly consign it to the refutation which it carries with itself.—There is no man in this country so ignorant, or so liable to be misled, as not to know, that law and justice are equally administered to every man, and of every religious persuasion. I have been a long time an attendant upon courts of justice; I have seen a long succession of judges; and I am proud to bear testimony, upon such credit as I may have with the public, that until the publication of this infamous libel, I never had cause to suspect, nor ever heard it insinuated, with respect to any one of all these judges, that his judgment had in the remotest degree been influenced by the religion of the parties before him. I believe, your own experience teaches you the same lesson, with respect to the conduct of juries. It is a question which is never

asked, and it is never even known in the administration of justice whether the plaintiff or defendant—prosecutor, or prosecuted—be of this religion, or of that—God forbid it should! And, therefore, with regard to this part of the work which treats of and endeavours to calumniate and bring into discredit—the administration of justice, I would leave it to the refutation which it carries with itself, and the conviction of every candid man that it is a wicked and mischievous slander.

But there is a branch of the administration of justice, of great and vital importance indeed, which does not fall—from the nature of the mode in which it is exercised—immediately under the eye and observation of the public. I speak of the exercise of the prerogative of mercy—entrusted to the crown for the benefit of the people—in this country delegated to the representative of majesty. It is one of the most serious and awful responsibilities, with which the executive magistrate is invested, et him have to exercise it in which way he may; whether by stopping the ordinary course of the law, by granting a pardon—or by refusing the application for its interference.—In either case, the duty imposed upon the executive magistrate is of the most painful and awful responsibility.—The libel in question relates to this branch of the administration of justice. If that be lightly and inconsiderately, but above all, if it be corruptly and wickedly administered—if there be an executive magistrate capable of abusing such a trust, no punishment can be too severe for his crime. It is, therefore, no light imputation, to charge the representative of majesty and those who advise him, with the abuse of so solemn and sacred a trust.

I shall call your attention, now, to that part of the chapter, in which the author enters upon this distinct branch of the administration of justice. He introduces it with a libel upon the lord-lieutenant, for the time being—whoever he may be: he applies this calumny in succession to every lord-lieutenant. The governors may change, but the libel applies equally to every one who may hold the situation; upon the principle, that as the government is now constituted by law, he must be of the Protestant religion. “In cases where the Protestant murderer or robber has happened to be convicted, his *Protestantism* has secured his pardon.”—Where a Protestant has committed a murder, or a robbery, his professing a religion which he disgraces, is a sufficient recommendation to the lord-lieutenant for mercy!—could we, gentlemen, have supposed, that any man in this country would have been found base enough to assert so infamous a libel, as that the murderer, and the robber finds a sanctuary in the religion which he has disgraced, from the sentence of the law?—it proceeds: “All the local *soi-disant* loyalists fall to work: memorials and petitions are prepared and subscribed: vouchers of excellent character are easily procured:

“even Catholics dare not withhold their signatures lest they should be stigmatized as sanguinary and merciless. Thus the testimony appears *unanimous*; and the lord lieutenant readily pardons—perhaps promotes the convict, who, in some instances, becomes henceforth a cherished object of favour.”

Good God! Must not the author of this abomination have known, that in the exercise of this painful and responsible duty, no applications—come from what quarter they may—have any influence with him, who exercises it, if the guilt be clear? The author could not be ignorant, that in such a case, vouchers of character have no weight. If ever a libel came forward with a peculiar bad grace against a lord-lieutenant, it is this against that governor, who, I can say, without flattery, if more eminent in any one part of his administration than in another, is so in the exercise of this prerogative, for which the virtues of firmness and humanity which distinguish his character so peculiarly qualify him. Every instance in which he has been called on to exercise that awful and anxious duty, has been marked by caution, the soundest judgment, and the most inflexible firmness. I need not say, that his amiable nature never would fail to incline him to mercy.

But I will not put the case upon the merits of him whose government we now enjoy. It is a libel equally false and unfounded, with regard to every representative of majesty who has ever been known in this land.

That is the libel, with which this part of the chapter commences, equal in point of falsehood and slander with the libel in question, although inferior in the heinous nature of the imputation; it being less heinous to grant a pardon, where it ought to be refused, than to refuse it where it ought to be granted. Accordingly, in this climax of wickedness, the author rises upon himself, he proceeds to contrast the *unfortunate Catholics* with the too *fortunate Protestants*. On the one hand, he says, and would thereby convey, that whereas the Protestant is pardoned, though he be guilty, and when pardon should be refused; where the wretched convict is a Roman Catholic, and has a claim to the mercy of the crown, it is denied to him by the representative of majesty in Ireland, only because he is a Roman Catholic! If the credulity of the Roman Catholics can be induced to believe this infernal slander—that they have not the benefit of the law, or justice, or mercy, when they are entitled to it,—I say, that insurrection would become a duty, and rebellion a virtue!

It is impossible to dwell upon this, without feeling emotions which cannot be suppressed. It is a call upon the people to break out into civil and religious war: such topics would not be used and urged with such jesuitical art, labour and perseverance, as exist in every part of this work, if the object of the author were not to effect a revolution, by the means of a civil and religious war. If I did not prosecute

this crime, I should not deserve to hold the situation with which I am invested.

I beg to impress upon your minds, that this is no unnatural or forced construction. The contrasted situation of the Roman Catholic convict is not stated in the broad language of the former proposition, because it would be too monstrous:—but you will find the insinuation is equally broad.

On the other hand, where the prisoner is a Catholic, he is destitute of this powerful agency and interference. His witnesses, as may be expected, are usually persons of his own condition and family. It is true, they may swear positively to an effectual and legal defence, wholly uncontradicted; but, *not* being Protestant (i. e. *respectable*, the epithet attached affectively to *every thing* Protestant) they commonly fail to meet with credit."

Gentlemen, I appeal to your own experience: do you ever hear the counsel, or the jury, or the party ask a witness, what his religion is, or attempt to discredit him on that account? It is a tissue of libels, the most shocking, and mischievous, that could be invented.

"Should he be convicted, a thousand rumours are immediately circulated to the prejudice of his general character, he is proscribed as a dangerous man, a leader of a faction: no grand jury interferes in his behalf: and he suffers death, *publicly protesting his innocence*, fortified by the testimony of his confessor's belief of his veracity, and exciting the sympathy and regrets of the people."

This is a representation of a general conspiracy among the Protestant community to destroy a Catholic, who has been convicted in a court of justice; insinuating to the Catholic population, that they are denied mercy upon idle rumours, without even ascertaining from what source they proceed; representing the exercise of this important trust, as a subject of continued and abominable abuse; yielding to the vouchers of character, in *favour* of the *guilty Protestant*, and to idle rumour *against the innocent Catholic*.

"And he suffers death, *publicly protesting his innocence*, exciting the sympathy and regrets of the people." This passage, you see, is addressed to the lowest order of the community; assuming it, as a proof of his innocence, that the convict declared he is so—and that he suffers death, being an innocent man, because he is a *Roman Catholic*.

This is the import of the chapter, to which the particular libel in question, refers. It commenced with a general libel upon the office of the lord-lieutenant—by charging him with two crimes—pardonning the murderer, and the robber, if Protestant—and suffering the innocent man to be executed, merely, because he is a Catholic:—The writer then concludes this part by a note, to illustrate and prove, by a fact and an example, the imputation, which he throws upon the government, and sufficient to inflame the Roman Catholic mind to madness.

It is intitled in the margin—"Tragical instance." The note is referred to, from the text by an asterisk.—Having stated, that the guilty Protestant was pardoned because of his Protestantism, and the innocent Roman Catholic suffered because of his religion—he calls the reader's attention to a note, which is the subject of the present prosecution.

"At the summer assizes of Kilkenny, 1810,\* one Barry was convicted of a capital offence, for which he was afterwards executed."—So far it is a statement of ordinary intelligence, and forms no ground of accusation.—But the writer proceeds—"This man's case was truly tragical. He was wholly innocent—was a respectable Catholic farmer in the county of Waterford; in good circumstances.—His innocence was clearly established, in the interval between his conviction and execution—yet he was hanged; publicly avowing his innocence!!!"—With three notes of admiration.—"There were some shocking circumstances attending this case—which the duke of Richmond's administration may yet be invited to explain to parliament."

Here, in this note, a charge is contained against the duke of Richmond, and his administration.—In what respect; evidently, in respect of the exercise of the prerogative of mercy, which the writer proceeds to illustrate by this "tragical instance." How is it done? It is done, with regard to one Barry:—In what way?—By suffering him to be executed, "when he was wholly innocent"—And why?—The reason assigned is—because he was a Roman Catholic!—It is impossible to read it, and misunderstand it.—No complaint is made of the executive government, but upon this point—the exercise of the prerogative of mercy.—This relates to the exercise of it, with regard to a convict of the name of Barry, "who was wholly innocent."—"His innocence was clearly established in the interval between his conviction and execution—yet he was hanged, publicly avowing his innocence"—and he was refused mercy, because he was a Catholic!—The title of the preceding paragraph in the text is—"Catholic prisoners, how treated"—and then the case of Barry is referred to, as a "tragical instance."—His innocence was established, between his conviction and execution, and therefore there is no imputation upon the judge who tried, or the jury who convicted him—but the imputation is flung upon him, in whom the prerogative of pardon is vested, and who refused to exercise it in favour of a man, who was perfectly innocent; and whose innocence was established; because he happened to profess the Roman Catholic religion.

I think it proper, in this stage of my statement, to mention, that I was last night served with a crown summons, on the part of the defendant, to attend as a witness in this cause, together with the right hon. lord Norbury, sir

\* This is a mistake in the publication, as to the year.—The trial of Barry was in 1809.

Charles Sexton and William Gregory, esq., requiring me to produce and give in evidence, the affidavits of James Rogers, Maurice Macartney, Thomas Hackett, sen. and Thomas Hackett, jun. and David Barry, and all other papers relating to Philip Barry, who was tried for highway robbery and executed for the same, as I should answer the contrary at my peril.

I confess, that my indignation was not a little excited at this attempt to pervert the trial of a culprit for a libel into an engine of faction to furnish fresh matter for libels upon the administration of justice, and the government of the country. They who advised the service of this summons, I am sure, could not but know, that your lordships would not permit them to convert the court of King's Bench into a court of parliament, to try the king's government on the arraignment of the publisher of an infamous libel. They knew, that it is impossible, according to the rules of law, and the ordinary course of proceedings, to go into an examination of the matter pointed at in the summons. They knew, that neither this Court, nor I, as attorney-general, would suffer the course of the law to be so abused and inverted.

It belongs to my office alone to put the subject on his defence for an imputed crime. It is not for the libeller to arrogate that privilege.

But the artifice of this base attempt—is too palpable not to be seen through.—I trust that learned counsel will not so lend themselves to faction, so forget their duty to their profession, to the administration of justice, and to the king's government, as to endeavour to make this trial an instrument to furnish materials for the slander and sedition of the daily newspapers, by affecting to go into a case, which does not exist:—because they know, it is a subject that the law and the Court cannot permit, in such a prosecution, to be investigated.

I have no doubt of the firmness of the Court.—I have in myself sufficient to hold in contempt whatever false and slanderous matters the seditious papers of the day may publish of me—I value not the praise, or panegyric of such papers—as little do I regard their censure. Should counsel for the defendant embarrass the case, by calling upon the Court to order, or upon me to produce papers, in order to try the government for a matter, of which, if guilty, they should long since have been impeached; I apprise them that, though I hold the papers in my hand, I will not produce them; and if they should ask me a question touching the transaction, I will not answer them. But I am ready to take all responsibility upon myself in the matter—I am ready to meet any charge, in its proper place, but will not indulge the spirit of faction, by inverting the order of all judicial proceeding.

If for the purposes of justice, not of mischief, or slander—or to satisfy an honest mind, any man wishes to see the papers, with regard to this case of Barry, he shall have access to them, when he pleases.

But, my lord, and gentlemen, I will, under the leave of the Court, for the sake of informing that part of the public, who may wish to be satisfied—but not those who are seeking materials for slander and sedition and abuse—read the papers, to which I have alluded.

I received a very civil letter from a gentleman of the profession, in the following words:—

*"August 18th, 2 o'clock, P. M.*

"Sir;—I have been called upon, as having been concerned for the petitioner, Barry, by the gentleman, who will deliver the inclosed to you, to authenticate the statements contained in it.

"Immediately on being applied to, I deemed it my duty to inform the learned judge of it. I did so by letter, in which I inclosed the affidavit mentioned in the petition.—His lordship has not honoured me with an answer, and as I have been informed by Mr. Rogers, retains the affidavit and has declined to interfere.

"I have only to state that the circumstances relative to the motion to postpone the trial of this unfortunate man are, to the best of my recollection, strictly true.

"I am certain it will not require any further apology for this trouble, than to say, that I am actuated, both by a sense of professional duty, as well as by motives of common humanity, in the part I have thus taken.

"I am,

"Sir, with every feeling of the most perfect respect, your most obedient, humble servant,

*"BURROWS CAMPBELL."*

This was the first intimation, which I had of the subject.—This letter was accompanied by a memorial from the unfortunate man—it is in the office, it was addressed to me, and is in these words:—

"To the Right Honourable William Saurin, His Majesty's Attorney General.

"The Humble Petition of PHILIP BARRY, now a Convict under Sentence of Death at Kilkenny,

"Sheweth,

"That your petitioner was confined in the gaol of Clonmell under a sentence of transportation, prior to the 5th day of August instant, when your petitioner had it first intimated to him that he was to be removed to Kilkenny, to be tried on a charge of highway robbery.

"Your petitioner sheweth, that on his being so called on his trial, petitioner made an affidavit to postpone his trial, stating the short notice petitioner had of his intended trial, and that five persons, in his said affidavit named, who were material witnesses to your petitioner, and without

whose testimony he could not with safety abide his trial, were then resident at a place called Kilkannon, in the county of Waterford, a distance of near fifty miles from the city of Kilkenny, and that from the shortness of the time which had elapsed since he had notice of his intended trial, he could not procure the attendance of such witnesses, as by his affidavit filed with the clerk of the crown will more fully appear.

"Your petitioner sheweth, that lord Norbury declared, that notwithstanding such affidavit, that from what appeared on the face of the informations, he would proceed with the trial next morning.

"Petitioner sheweth that next morning the trial was called on, when your petitioner's counsel, Mr. Campbell, addressed the Court, on petitioner's behalf, upon the facts stated in said affidavit, and in the course of his address to the Court, appealed to a magistrate then in court, whether he did not know some of the persons named in said affidavit, and whether they did not reside at the place mentioned in said affidavit, to which such magistrate having replied in affirmative, your petitioner's counsel offered to have said magistrate examined on his oath as to such facts, which however was not done.

"Your petitioner further sheweth, that although there was ample time for the crown solicitor to procure affidavits in answer to that made by your petitioner, yet no affidavit was made, although several of the statements, if false, could be easily contradicted.

"Your petitioner sheweth, that the counsel for the crown did not press the trial, yet his lordship called it on, and your petitioner's counsel not having had any instructions; and your petitioner's witnesses being absent—he declined defending your petitioner, and left court immediately; on which the trial was called on, and your petitioner in a short time was convicted, and is now under sentence of death, to be executed either to-morrow or to-morrow week.

"Your petitioner sheweth, that on the persons named in said affidavit hearing what passed, they voluntarily went before Morgan Kennedy, esq., a magistrate, and made affidavit of the facts they could prove—which facts, if believed by the jury, must have acquitted your petitioner, as by said affidavit in possession of lord Norbury, will most clearly appear.

"Your petitioner therefore humbly submits to you, that he has not been fairly tried, that he had not an opportunity of producing his witnesses and manifesting his innocence, accordingly throws himself upon the mercy of the crown, through your just and humane interference—he would gladly accept a pardon on the terms of transpor-

tion for life, and humbly hopes, that as the prosecution was conducted under your authority, you will be pleased to direct an inquiry into the facts here stated."

No mention whatever was made of the religion of Barry—or that Mr. Campbell bore testimony to his innocence, that gentleman having confined himself to the motion for postponing the trial.—This naturally induced me to go directly to the government and have a letter written, which your lordships know is the constant course, to the learned judge, before whom the case of the convict had been tried: accordingly a letter was written by sir Charles Saxton, to lord Norbury, and his lordship's answer was the following:—

"August 18th, 1809. 6 o'clock.

"My Dear Sir;—I have at this moment received by your messenger the memorial of Philip Barry, upon whose case I had conference with baron George, both before and after his trial, which under the existing circumstances, we were of opinion should not be postponed on the affidavit alluded to.

"The robbery tried at Clonmell, and at Kilkenny were on the same road, and within a few miles (about 7), of each other, in the mail-coach line to Cork.—Upon receiving a letter from Mr. Campbell of the bar, on a similar application, I again further conferred with baron George, whose note of the trial before him, I send you. It further appeared to me, from the examination annexed to the bill of indictment, and from what happened on the arrest of the prisoner, that he was fully apprized, at that time, of the charge of the Kilkenny robbery, and on the trial at Clonmell, the witness, Rogers, alluded to, attended and gave evidence, and was apprized of the order of transmittal. The robbery in Kilkenny, was in open daylight, of a gentleman of the name of Keefe, whom prisoner detained in custody a considerable time, and he and his servants positively identified the prisoner, with whom he was confronted: at Mr. Elliott's, the magistrate's, immediately after being taken, that there could not remain a single particle of doubt of the guilt, and it was merely from the accident of arrest on the confine being in Tipperary, that he was first transmitted to Clonmell on similar charges.

"It is remarkable that in the memorial you send, the prisoner is stated as having been under sentence of transportation, confined in Clonmell previous to the 5th of August, without alluding to the connected matter of the charges in each county:

"Upon the whole, had I thought the case such as stated in the memorial, you should have had instant notice, as in other cases in which you have been troubled."

This letter was accompanied by the report of baron George, before whom the same man had been tried at Clonmell.

17th August, 1809.

"My Dear Lord;—At the last assizes at Clonmell, Philip Barry was indicted before me in No. 82, for having on the 4th of July last, maliciously fired a pistol at Patrick Codd, with intent to murder him, against stat. at Clonbower, and in No. 83, for feloniously demanding money from Patrick Codd, with intent to rob him, against stat. at Clonbower in the county of Tipperary; both of these facts were proved in the fullest manner against prisoner, who was taken on the spot, being in a struggle disarmed of the pistols, and with them he was directly brought before J. B. Elliot, them agistrate, who committed him.

"The prisoner, in his defence, produced Mr. James Rogers who swore that prisoner was once his servant, latterly his workman; witness had borrowed a case of pistols from a Mr. Heron, who lived in the county of Tipperary, his brother-in-law to protect himself with them, as he lived in a disturbed country, and had been attacked once or twice; Mr. Heron wrote to him to return the pistols, and witness sent them back to him by the prisoner, he gave them to prisoner unloaded, and gave him no ammunition, and prisoner had 28 or 30 miles to go from his house to Mr. Heron. The prisoner had the arms in his possession four or five days before he was taken up as aforesaid.

"I charged the jury to find him guilty on both the indictments, telling them, that one of them was a capital, and the other a transportable felony; in both of which they who prosecuted for the crown had him given in charge together, and the jury, from a merciful principle, doubtless, found him guilty of the transportable offence only:—at the foot of my note of the evidence, I find this order (to be transmitted to Kilkenny to be tried for highway robbery).

"The above is the note of the case of Philip Barry, which your lordship this day wished me to furnish; I have the honour to be,

"Yours, very sincerely,  
"Coldblow, "D. GEORGE."

This was the respectable farmer, who was "wholly innocent." There was also transmitted a letter from Mr. Elliot, a magistrate.

23rd August, 1809.

"My Dear Lord; I had the honour yesterday of your letter of the 20th, and had written to you yesterday morning partly on the subject of your letter, but will now state more fully. Barry was taken near my house, and was brought by Mr. Codd and the country

people, in a few moments after, to me; when I saw Barry, it struck me, it might be the same person who robbed Mr. Keefe and so charged him with the transaction. He did confess he did commit the robbery, and gave me some account of the half notes and debenture of Keefe's, with other things which were in a valise, the straps of which I found on Barry. I have the strongest ground to believe that this man was employed by ——— and ——— both distressed men, and that ——— had Keefe set for the purpose: the pistols which were found on Barry belonged to ———, and Barry told me he had them when he robbed Keefe. I have nearly forgot to state that I sent for Mr. Keefe who came here with the person who was in company with him when he was robbed, and both of them identified Barry, and, they appeared to have a great effect on Barry; for he, before their arrival had promised me some information, but when Keefe told him he would prosecute him, he never opened his lips to me after.

"I have the honour to be, &c.  
"J. B. ELLIOT."

I need not here dwell upon the circumstances of the case. The man was convicted, and pardon would only be extended to him upon a presumption of his innocence. He was convicted by two juries and by two judges, without any doubt of his guilt—there was never any doubt of or an allegation of his innocence. —But as to his religion nothing was ever mentioned, until this book appeared. Nor to this moment do I know, nor have I any reason to believe, that he was a Catholic, certainly not the more so because it is so stated in the "Statement of the Penal Code."

I shall say very little more upon the subject.—But I cannot avoid taking notice, that this work is reported to be the production of a barrister. I have no authority or evidence to warrant me to say it is so.—I would to God, I had authority to say it is not so.—But if it be the work of a barrister, I must take leave to say that I am sorry for it—because I should be sorry that there should be a barrister such a disgrace to his profession, as the author of this mischievous and malignant libel—if he be a barrister, I trust that he will learn from the verdict of that jury, and the judgment of the Court, to appreciate the magnitude of the crime of which he has been guilty. Sheltered as he may be, under the anonymous character, in which he has issued forth his poison to the public, from the sentence of the law, he will yet stand convicted in the mind of every honest man who loves the constitution, and the peace of the country, as a great criminal and malefactor; and the remainder of his life cannot be so well employed as in making the best atonement possible, for this violation of the law, and the wicked attempt which he has made, to disturb the peace and happiness of his country.

Mr. *Solly*.—My lords, I have an observation to make upon the subject. If the attorney-general will undertake to put the truth of "the Statement" into a proper course of candid investigation, I can inform him, who the author is, and I throw out that challenge to him.

Mr. *Attorney General*.—I did presume, and had anticipated that such an attempt would be made, and I am now confirmed in my opinion. The gentleman knows right well, as he takes this matter upon himself, how and where to bring the acts of the government into question. I have been already drawn before parliament upon this subject, for having *ex gratia* and according to the usage of my predecessors—served a notice on the defendant before I filed the information against him—they are not ignorant of the mode, and have no difficulty in the way. There are disorders incident to the political, as well as to the natural body: but, in my opinion and experience, there is no disorder incident to the political body so acute or so inveterate for which a temperate application of the law will not prove an efficacious remedy—it is to the principles of Jacobinism, to which all these proceedings may be traced—the consequence of those mischiefs which burst upon us from the French Revolution—which ruined France and endangered the constitution of England—which almost produced a rebellion there, and actually produced a rebellion in Ireland—the dregs still remain, but are wearing away, under a firm and an honest government, which must prove too strong for faction—the political health will be restored—and ere long, faction will not dare to raise itself against the law of the land, the dignity of the courts of justice, and the king's government.

I am here prosecuting a libel, and would not stoop, even if the law would permit, in such a case, to defend the government [on the arraignment of the libellous author of the "Statement of the Penal Code."

*Bernard Higgins* sworn.—Examined by  
Mr. *Solicitor General*.

Where did you get that book which you have in your hand?—I bought it at Fitzpatrick's in Capel-street.

Does he keep a shop?—He does.

What kind of a shop?—A printer and book-seller's shop.

When did you buy that book?—On the 19th of June last.

Did you make a memorandum in the book to that effect?—I did.

What is the title of it?—"A Statement of the Penal Laws, which aggrieve the Catholics of Ireland, with Commentaries: in two parts—Part II."

Who purports to be the printer?—H. Fitzpatrick.

*Bernard Higgins*, cross-examined by  
Mr. *O'Connell*.

Who sent you to purchase this book?—Mr. Kemmis.

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You are a clerk of his?—I am.

You are aware of the part which relates to this trial?—I am.

You have read it?—I looked into a few pages, after I bought it.

Do you ever go to the Castle?—Sometimes I do, with letters.

Who is the chief-secretary at present?—I believe, Mr. Gregory; I am not certain.

Try again: can you mention any other?—I believe Mr. Peel is.

About how long has he been secretary?—I cannot say; it is not very long.

Was he secretary when you bought that book?—I do not know.

Is it not since June last, that he became secretary?—I cannot tell.

Do you recollect, whether it was since June, that Mr. Gregory got his employment?—No, sir.

Do you happen to know who are king's ministers in Ireland? did you ever hear of them before?—No, I did not.

It is part of the subject here: do you know what is meant by the king's ministers in Ireland?—I do not. I suppose the lord-lieutenant is.

He is not the king's minister: can you not tell me, who are the king's ministers here?—I cannot.

Mr. *O'Connell*.—Then you cannot give me an attested copy of the king's ministers in Ireland.

[Here the note, stated by the attorney-general in the publication entitled, "A Statement of the Penal Laws, &c." respecting Barry, was read by the officer of the Court to the Jury.]

Mr. *O'Connell*.—That note is the only part which is contained in the information, and there is a variance between the paper as read, and as it is stated in the second count in the information; for in the latter the word "Farmer" is omitted, by a clerical mistake, which puts the second count out of the present case.

[The counsel for the crown then desired, that the officer might read other passages from the publication.]

Mr. *Barrowes*.—My lords, I beg to know, whether the Court be of opinion, that without any averment respecting other passages in the book, the counsel for the crown are entitled to read them.

Mr. Justice *Day*.—In order to show the *quo animo*, they may read these other passages.

Mr. Justice *Osborne*.—I think they have such right, as evidence of the intention.

Lord Chief Justice *Deane*.—And the defendant, if he thinks fit, may read all the rest of the book.

[The officer of the court then read the passages from the book, pages, 227, 228,

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and 229, as stated by the attorney-general.]

Mr. O'Connell.—We did not object to the counsel for the crown reading that book, or any paper they please, but there is no fact proved to bring that book home to the defendant. The witness stated, that he bought the book at the shop of H. Fitzpatrick; but whether H. Fitzpatrick be the defendant does not appear.

Mr. Solicitor General.—My lords, it is very true; the witness was not so particularly interrogated, we not supposing the defence to rest upon any such objection: and the witness being in a bad state of health, was permitted to leave court. We will therefore call another witness.

Mr. Watson, sworn.—Examined by Mr. Sergeant Moore.

Do you live in this city?—I do.

Where?—In Capel-street.

At what number?—No. 7.

Do you know any person of the name of Fitzpatrick, a bookseller?—I do.

Do you know Hugh Fitzpatrick, who is the defendant here?—I do.

At what number does he live in Capel-street?—At No. 4.

Is he a bookseller?—He is.

Do you know any other bookseller of the name of Hugh Fitzpatrick in Capel-street?—I do not.

There is no other bookseller of the name in that street?—There is not.

Mr. Watson cross-examined by Mr. Wallace.

Do you swear, positively, that there is no other person of the name of Fitzpatrick, keeping an office or house in Capel-street?—There is, no bookseller of the name.

I did not ask you that. Do you undertake to swear positively, that there is no other person of the name of Fitzpatrick, keeping an office or a shop in that street?—I do not.

Mr. Sergeant Moore.—Is there any other bookseller's shop, in Capel-street, kept by a person of the name of Hugh Fitzpatrick, but the one which you mention at No. 4?—There is not.

Mr. Wallace.—Do you know who are the king's ministers in Ireland, acting under the duke of Richmond?—Some of them, I believe, I do: if you mean, whether I know them personally or by name, I do not know them personally.

Do you know them either way?—Yes, some of them by name.

Do you know the king's ministers?—Yes.

Whom do you understand by the king's ministers?—The superior persons in the executive government.

Do you apprehend, that a sheriff is the king's minister for any purpose?—I do not consider him to be the king's minister; but that he is the king's officer.

Let us know, whom you understand to be the king's ministers?—The lord-chancellor, the chief-secretary, the attorney-general, and solicitor-general.

Is that your catalogue of the king's ministers in Ireland?—I cannot say; the under-secretary is one of the ministers, I should think.

Do you think it well ascertained who they are?—I do not know that it is.

Who is the chief secretary now?—Mr. Peel, as I understand.

How long as he been so?—Within six months I believe.

Who was the king's minister in that capacity, in the month of June last?—I cannot say.

Is your knowledge confined to the present minister? Who was the secretary, immediately preceding the present?—Mr. Pole.

Was he secretary in the month of June last?—I cannot say.

How many months, or years, was he in office?—I cannot say.

Was he not in office in the month of June last?—I believe he was.

Do you know when Mr. Gregory came into office?—I do not.

[Case closed on behalf of the Crown.]

#### DEFENCE.

Mr. Burrows.—My Lords, and Gentlemen of the Jury: I am counsel in this case for the defendant, Mr. Hugh Fitzpatrick, who is upon his trial for the publication upon which so much invective, in so feeling a manner, has been lavished. I hope that the tenor of my life has protected me from the suspicion of lending my professional, or other aid, to forward the purposes of sedition; or under the mask of making a legal defence, administering to the seditious views of incendiary libellers. The attorney-general, whether he called to recollection his own experience of me, or considered the character which I hope I universally bear, should in candour have concluded, that it was very little necessary to give me any caution on that subject; and he should have equally known, that no intimidation could ever prevent me from defending my client with that freedom and boldness, which our laws warrant, and from which the administration of justice derives its greatest lustre, and perhaps its best security.—I will not deny him the merit of not being deterred from the discharge of his duty by any fear of obloquy, and am ready to bear testimony to the courage and zeal, with which he conducts the crown prosecutions; but I will tell him, that the Irish bar never has failed, and never I hope will fail, in supplying advocates, as firm and as zealous in the discharge of their duty, as any attorney-general can be in the discharge of his—and I will for myself add, that my own reason and my own conscience shall be the sole guides of my own conduct.

This old man, Hugh Fitzpatrick, the defendant in the present case, has been a shopkeeper and citizen of Dublin, carrying on the business

of a bookseller and printer for near forty years, and is now for the first time arraigned at the bar of his country for publishing a scandalous and seditious libel; and it will be for you to decide whether he is to be immolated upon the altar of the offended laws, or offered up as a victim to appease the feelings of, as we are told, a brave and amiable Viceroy.—If the defendant has not offended the law, there is, I hope, no fear of his suffering such immolation; and although the prosecution goes to impeach the work, entitled, “A Statement of the Penal Laws,” and written to expose the severities which they inflict; and although upon such a subject, I address a jury exclusively Protestant, in a city where many Catholics of wealth and rank might easily be found, yet I know some of you, and I am convinced that if I satisfy your judgments that my client (abused and reviled as he is) is not guilty of the criminal intention imputed to him, whatever your feelings may be upon the general subject, you will not justify future charges of partiality, by proving that the advocates of Catholic rights, cannot have any chance before a Protestant Jury, selected by the emissaries and instruments of the Castle.

You are about to act in one of the most interesting causes of alleged libel that ever has been discussed in this, or any other country. You are called upon—on an information, such as I shall state, supported by evidence that goes to a certain extent, and no further—to pronounce a verdict of guilty against the traverser.—Gentlemen, let not my eloquent and long attached friend, when he comes to reply, mislead your judgments.—He will not misrepresent me, as making an appeal to your feelings to induce you to violate your consciences. No, I appeal to your sense of right, to your conscientious feelings.—My appeal to you is, to discuss this subject without prejudice or bias of any kind:—although I cannot call in aid of my defence, the circumstances that the defendant is not himself the author of this work, yet whoever he may be, if I can discover in the pamphlet which has been given in evidence, any justification for the author, that will be a justification of the publisher, and I desire no more. You will not find the publisher guilty, if you would not find the author guilty, because the former has exhibited an example of fidelity, which in itself is not to be reprehended, when he comes forward and braves the consequences of a government prosecution.

There is no subject so trite, yet important; so vulgar, and yet so vital, as that subject upon which I must address you.—The liberty of the press, which is as necessary to the health and vigour of our constitution, as the air which we breathe is to human life, has been so familiarized, I would almost say, vulgarized by frequent discussion, that its value is not duly appreciated—and I am afraid we have lost much of the reverence which we owe to this paramount protection of our constitutional liberties.

A free press has ever been an object of hatred to arbitrary power.—It is natural that it should be so.—It is the most formidable impediment to the advance of lawless ambition—it is a control vested in the people to stop the encroachments of inordinate power. It curbs and cures the excesses and defects of the law of the land, by the law of reputation.—It enables the people to pronounce a judgment which cannot be resisted or reversed—and is one of those reserved rights which no free people can relinquish.—If it does exist, there can be no permanent tyranny in the land;—if it does not, there can be no secure freedom.—It is the organ through which the censorial power of the people is exerted, and if it be silenced, further opinion never can speak or be respected.—It is not only necessary to have this freedom of communication upon public subjects sanctioned, but it should be cherished.—It should be free from the apprehension of danger.—If it be coerced it perishes—from its effervescent nature it cannot exist in any energy or be of any value, if it be confined within narrow limits, or subjected to rigid regulations. There cannot be fulness, if there may not be overflowing.—I know not, gentlemen, what you may feel upon those *ex officio* informations, which are growing into the regular practice of the crown, and which fill me with dismay. I know that there is a propensity in power to put down whatever may inadvertently upon its excesses, and I am equally certain that the liberty of the press will be effectually undermined, and that those who dare not attack it at once and by assault, may yet gradually deprive it of all its energy and all its usefulness. The language of crown lawyers upon this subject is equally ridiculous and alarming. Juries are told that the people of these countries ought to enjoy all the advantages of legitimate discussion, but that public men and public measures ought not to be reproached—their feelings must not be wounded, or their reputation blemished—discontent must not be excited, nor the affections of the subject alienated from the ministers of the crown. Good God, gentlemen, what a delusion is attempted to be practised upon our understanding by such sentiments! How can the press at all act against the machinations of bad ministers, but by exposing their measures and themselves to public odium? How can this be done without aspersing their characters and hurting their feelings? How can bad laws be repealed, or a bad administration of them restrained, but by exciting discontent towards such laws, and reprobation of such ministers? Are not all abuses removed, and all reforms effected through the very operation of that discontent which is relied upon as the criterion of sedition?

In respect of the freedom of the press, I am happy to live in an age, in which the early attempts of this reign to extinguish it have been frustrated by one great constitutional act of parliament, which places it, where alone it

can be safe, in the jury-box—I mean the Libel act, which will immortalize the memory of that great man, Charles Fox. A libel is now no longer a matter of law, cognizable by the Court only and by the jury never.—Every effort to control the press must now fail, unless juries shall become servile instruments of ministers—unless they can be culled and packed, willing and obsequious instruments of whoever chances to be in power. The Libel act has declared, that in every trial it shall be competent for the jury to find a verdict of guilty or not guilty, upon the whole matter submitted to them; that is, they are to exercise their own judgment, and to decide upon the whole matter generally, not restricted by technical rules, or by the opinion even of the judges who preside upon the trial. Here jurymen are presented with an opportunity of for ever securing to their countrymen the advantages of free discussion—they are restricted by nothing which can control their opinions—by no directions from the Court. Their own conscience is to be their safe guide, and if they believe a work to be well intended, they never ought, and, I trust, never will subject its author to punishment. This is simple, plain, and practicable doctrine.—You are to decide, and to decide with indulgence, upon the motives which actuated the author. If you believe him to be actuated by a malignant spirit of detraction, or by a desire to wound the feelings of an enemy—if you believe his motive to be personal and malicious, and not public and generous, you ought, without hesitation, to consign him to punishment; but if, in looking through the whole work, you see that it is the production of a mind intent upon public improvement, that the author is indignant at the misconduct of others, that he is actuated by a pure and honest design to promote the general welfare of any portion of the community, and, with a manly daring, proclaims public abuses, you will judge liberally and candidly of his intention, and indulge even his failings, when they are the excesses of good feelings. Give me leave further to remark, that if you are to try the author of a long work, who directs his lucubrations to some justifiable or laudable end, the freedom of the press vanishes, if you condemn him because, in some one page you find an isolated passage in which he may have been mistaken, or in which his animadversion may have been disproportioned to the object of his censure. You should view the context of the work, and decide upon the whole—the *quo animo* it was written—whether the author was striving to sever the affections of the people from the constitution, or whether he was labouring to have the people adopted into the constitution, in order to prevent that very effect.

Having made these general and preliminary observations, I will turn your attention to the real source from which this work has originated.—You are apprised that it purports to be “A Statement of the Penal Laws which aggrieve the Roman Catholics of Ireland,”

and the object is, by exposing to public view the nature, magnitude and extent of the restrictions upon the Catholic body, and by demonstrating their unconstitutional tendency, to induce a repeal of them. It was written and published, in consequence of its being giddily and rashly asserted, by very high authority, that the restraints under which Roman Catholics laboured were slight, few, and trivial. That statement was followed by another, which was published in a government paper, and which was four or five times re-printed, giving but a partial statement of the disabilities under which the Catholics laboured, and inviting any man on the other side to show that they extended further, or deprived the subject of any fair enjoyment. Was it criminal in the author to obey the summons, and take up his pen to disabuse the public, and show, that however high the authority was, which asserted that the Catholic grievances were few, slight, and trivial, he was mistaken? I conceive it was not only not criminal, but was laudable—it was a work which a proud man might bequeath to his posterity, as the best legacy he could leave them; but while it was a laudable undertaking, I can scarcely conceive any more hazardous; because I defy any man to publish his sentiments upon that subject without hurting the feelings of some who think that the Roman Catholics are too much indulged, and our free constitution endangered by the privileges which they already enjoy. It is not an easy task to argue down inveterate prejudices connected with imagined interest; and he must encounter much hazard, who is to be tried by the very men, upon whose errors he animadvert.

The author of this work has certainly written with warm and indignant feelings—he felt strongly, the grievances which he has depicted forcibly—he has spoken with the feelings of calumniated integrity, and has fully evinced his title to that liberty which he seeks for himself and his brethren; his sentiments and his language are constitutional, and manifestly designed to promote final harmony amongst the people, and give permanent strength to the empire. But the gentlemen on the other side say, the work is calculated to excite alarm and discontent among the people. When did you ever hear of any appeal made to the people, complaining of particular laws or measures, and requiring redress, which was not liable to this objection? The very assertion, that the Roman Catholics are deprived of rights which they ought to enjoy, is calculated to create some degree of discontent, and could it be considered as a crime, that the work had that tendency, without which any remedy would be impossible? When we were looking for the repeal of the 6th of Geo. 1, it was not thought treasonable to write upon that subject warmly and boldly, and to call upon the people to assert the independence of the land.—Were not such appeals calculated to excite alarm and create discontent? Will you tell

me how I could write, speak, or so much as articulate upon a subject of complaint, and endeavour to interest others in the cause, without exciting discontent?—all discussion upon public subjects excites discontent.—Why? Because the diffusion of knowledge lets the people know the state in which they are, and ascribes their sufferings to causes which they did not understand to exist.—It must be the effect of discussion upon such subjects, to render a number of the subjects dissatisfied with the state of the law or the government. Such is always the process, when improvement is sought through the medium of the press.—Grievances exist, either in the law, or in the administration of it,—the matter is canvassed—facts are stated—the people are dissatisfied, and to some degree, perhaps, inflamed; but the attorney-general, who only thinks of one side of the subject, is all amazement, that there should be any complaint, and that the tranquillity of government should be invaded; and, he talks of the insulted feelings of a brave and amiable nobleman, who, perhaps, was very little, if at all, in the contemplation of the author, while his mind was filled with the sufferings of millions, and occupied in reviewing the past, and anticipating the future.

This book does state, with great minuteness, an infinite variety of ways in which the Roman Catholics of Ireland suffer and are inferior to the Protestants of the country; it canvasses the causes and the effects of this distinction, and it introduces topics, without which it would be lame and impotent indeed: namely, the malignant and hostile spirit of the very principle of this distinction—it states, truly, the foundation upon which it stands, and upon which it is justified. It says that this principle goes to hurt the character of the Roman Catholics, and to withhold patronage and protection from them in a thousand ways. What is it upon which the exclusion of this class of men from the benefit of equal rights is justified? It is by an imputation, which marks them out as morally tainted—as professing doctrines and opinions, which render them bad men in private life, and as public men, dangerous and bad citizens. It imputes to them, that they held no faith with persons of a different religion,—that they bear no allegiance to a Protestant power; that an oath has no obligation upon them, as living under a church, the head of which wields a dominion over right and wrong, which it would perhaps be impious to ascribe even to the Deity; that it can pardon any act done for the promotion of the Roman Catholic religion and power, and alter and modify the very nature of virtue and vice. In vain have the Catholics disclaimed, upon oath; these imputations; colleges and universities of high and established reputation have denied them, and expressed indignant sorrow that such opinions should still be ascribed to them, and that this injurious calumny should be made the foundation of precluding persons of that reli-

gion from that political equality, without which it is impossible to pretend to the enjoyment of the British constitution.

I am not over-stating what is represented in this book, as the effects of these restrictive laws, and set forth in detail. The author felt, that the Catholic body was more injured by the spirit of the laws, than by the laws themselves. Can any man doubt the truth of the assertion?

Is it false and malicious to say, that generally speaking, the effect of those laws is, to degrade and keep down the Catholic body?—to deprive them of their natural situation in society, and destroy the effect of character, which is the most valuable property which any man can enjoy? Perhaps the author has exposed [these prejudices too strongly: I do not adopt the sentiments of every part of his work. There may be a few, and but a very few passages, which I would have advised the author not to have written, or have softened down: this is an acknowledgement which I should be compelled to make of every book ably and ardently written, which I have ever met. But no man, whose mind is not heated with prejudice upon this subject, can examine this book without feeling a sympathy with the author, and without ascribing to him a *bona fide* good wish to amalgamate all the people of the empire, and to render the constitution strong and impregnable, by uniting every sect in its defence.

I never knew a cold-hearted man do a noble act—this work is written with the ardor and spirit of a man who felt what he described; and the intent and bearing of the entire work is to be taken into your consideration. Read the text with care and impartiality, and you will find that the object of the writer was—a condemnation of the penal code: reading it with that view, you cannot consider it as dangerous or criminal—it is not calculated so much to alarm, as to make an impression upon the Protestant heart, favourable to the Catholic cause, relying upon and appealing to the benignity of their nature and their enlightened feelings. It is not imputed to any individual that he is influenced by an unjust, oppressive, or illiberal spirit. But the author complains that the anti-catholic code of laws created and prolongs an hostile disposition—that they constitute an engine of power which is not to be trusted with safety to any body of men; that this power being founded on jealousy and distrust will probably be exercised with harshness in whatever hands it may be placed; is not this a fair consideration of the subject? Does it reflect upon the Protestant creed—the Protestant people? Listen to the author himself—in the first part, page 67, he says:—

“This statement extorted from our sufferings, may possibly be termed an invective against our Protestant fellow-subjects. Far be such an intention from our thoughts. We solemnly disclaim it. We know the benignity of nature, the generous and enlightened feel-

ings which belong to our estimable fellow-countrymen. We impute to *them* no innate hostility, no injustice, no oppression, no illiberal principles. But we complain of the anti-catholic code of laws, which necessarily produce a hostile disposition. We complain only of the injustice and oppression which those intolerant laws continually create and prolong—laws which invest the ruling class in Ireland with a monopoly of power, not to be trusted with safety to any body of men whatsoever. Laws which taint the early thought, vitiate the education, pervert the heart, mislead and darken the understanding. Such a code, in our opinion, must necessarily corrupt the practice of those, whether Catholics or Protestants, whom it would profess to exalt; and must debase whom it would distinguish with excessive privileges and power.”

Again hear him in page 237.

“The anti-catholic code of laws is the sole source of all the injustice which we have stated. It inspires early sentiments of aversion and contempt: it nurses those vicious sentiments to maturity—holds out rewards and honours for their cultivation and exercise: and diffuses intolerance and persecution through every stage and department of life. How can we arraign Protestants, if they merely obey the spirit of the laws, and conform to principles sanctioned by the state? How shall we condemn the sheriff and jury, whose malpractices flow not from malignity or wilful injustice, but from false principles of education, prejudiced habits of thinking, and, above all, from the slanderous imputations which the penal code cruelly affixes to the morals and integrity of the Catholic fellow-citizens.

“It cannot be denied that the intolerant principle of this code must produce the same effect upon the members of one religion as upon those of any other—that the Protestants would have equally just grounds of complaint, were they debased to the present condition of the Catholics—that the latter would naturally be as likely to abuse excessive power, as the former. No doubt they would. It cannot be otherwise.”

I have met many enlightened Protestants, whose opinions have been entirely changed with regard to the Catholics of this country, who at this day believe that to be wisdom and philosophy, which once they denounced as treason. We cannot hope an universal and instantaneous change of mind, but we cannot reasonably doubt that it will finally take place upon this subject, and I have no doubt but that the book under prosecution will hasten the crisis of universal toleration.

There are men who deem it seditious and libellous, and in some measure treasonable, that any man should attempt to shake or disturb the established system, by virtue of which the Protestants exercise a monopoly of civil rights. This sect is in a state of rapid decay—and I indulge enlivening presages that the succeeding generation will scarcely know that such a sect ever existed.

It is said; that the Catholic is in the full enjoyment of the right of property—of most other civil rights—that they may cultivate trade—may enter into professions—purchase estates, with little or no control. If this be so, as unquestionably it is to a great degree, why should there be any distinction as to civil qualifications, the natural and necessary result of such acquisitions? Is it not absurd, that a community, consisting of four fifths of the people, should have unbounded rights as to the acquisition of property, and be limited and manacled as to the privileges constitutionally inherent to property? It is a disfranchisement injurious to them and to the state—inconsistent with the vital principles of our constitution—which cannot be tolerated—which cannot last—which the Protestants themselves must put down—and which, while it exists, must impair the strength of the community—and put the constitution and the empire at hazard.

Did the attorney-general shew any passage in this so much censured book, which tended to create in the Catholic community of Ireland any general spirit of insurrection against the laws—any insubordination to the government of the country—any tendency to invite or to harbour a foreign invader?—Let the passage be shewn, and pointed out.—If I am told, in answer, that in general, it goes to dissatisfy and discontent, I must sit down, and never rise to justify it—because, from the nature of every complaint, it must, more or less, excite discontent.—No candid mind can read the work, without seeing a burning zeal to extinguish all those disabilities, in order to a perfect enjoyment of civil rights, and to enlist in defence of the constitution every individual in the land.

I shall now call your attention to the passage for which the publisher is prosecuted, and which is to be found in a note, page 229.—It is as follows:—

“At the summer assizes of Kilkenny, 1810, one Barry was convicted of a capital offence, for which he was afterwards executed. This man's case was truly tragical;—he was wholly innocent—was a respectable Catholic farmer in the county of Waterford, in good circumstances.—His innocence was clearly established in the interval between his conviction and execution.—Yet he was hanged, publicly avowing his innocence!!! There were some shocking circumstances attending this case, which the duke of Richmond's administration may yet be invited to explain to parliament.”

This is the matter charged to be a libel upon the lord-lieutenant, and his majesty's government; and it is now contended, that the work conveys this imputation; that the lord-lieutenant, with full knowledge of his innocence, refused to pardon the man, because he was a Catholic. Possibly an ingenious special pleader, with proper averments, to be afterwards proved, might shew this ground of imputation to be conveyed,

and no doubt it would be an heavy charge.—But I assert that this passage does not necessarily import any such charge, and as there is not any averment to extend its meaning, no such meaning ought to be ascribed to it.—The attorney-general will not suffer the traverser to prove the truth in his vindication, and therefore ought himself to be coerced within the limits of the law in ascribing a criminal meaning.

I call for the opinion of your lordships upon this subject, that the passage, set forth in the information, is not libellous *per se*, and cannot be made so by additional, extrinsic evidence;—there being no averment in the record to let in such evidence. This doctrine is laid down expressly, in the case of *Hawes v. Hawkey*,\* and in the *King v. Horne*.†—There must be a distinct charge of a necessary criminal import made against the person alleged to be libelled, or it must be distinctly *averred* and shewn by legal pleading, that a crime has been so imputed to that individual, in its nature, libellous.

Now I, at once, admit, that if it could be proved to your satisfaction, that the author of this book did impute to the lord-lieutenant of Ireland, the base, and foul act of refusing pardon to an innocent man, because he professed the Roman Catholic religion—as it would be one of the most base and abominable acts, which a chief governor could commit, so it would be a most atrocious libel, if it were ~~imputed~~ imputed to him. But I do say, that there is no legal ground for such a charge—that there is not a scintilla of evidence to support it, without trampling down the rules of pleading, and the security of the subject. I have already stated, that there is an averment in this information, that the publication was of and concerning the lord-lieutenant, but not of and concerning the exercise of the prerogative of pardoning.

Mr. Justice Day.—The statement in the information is not so strong. The allegation is, that it is a libel of and concerning the lord-lieutenant, and the ministers acting under him.

Mr. Burrows.—Your lordships will therefore have to determine, whether it be a libel *per se*, or not, and for that purpose, I beg leave to read it again—(which Mr. B. did).

Give me leave to say, that a man may be convicted and executed; and although he be innocent, such an event casts no necessary imputation upon the Court, or the jury, the counsel for the prosecution, or the government. It is only saying, that human nature is fallible, and that the laws are not perfect. I know it is a benignant principle of our law, that it is better that nineteen guilty persons should escape, than that one innocent person should suffer. I have no doubt, that five hundred guilty persons do escape, for one innocent

man who suffers. The judge and jury must receive the evidence from the testimony of witnesses—who may be corrupt, prejudiced, or mistaken.

Mr. Justice Day.—Do you remember the case of a man, who was tried before lord chief justice Hale, for murder?

Mr. Burrows.—My lord, I do, and there are many cases of a similar nature. The matter charged to be libellous, is a mere statement, that a man was convicted of a capital offence, and executed—that he was innocent, and that there were some shocking circumstances attending his case, which the lord-lieutenant's government may be invited to explain in parliament. This cannot be libellous, *per se*, except in imagination, and fancy, the morbid feelings of an attorney-general, or the delicacy of a viceroy.—The jury cannot act upon such grounds, and when the investigation is before parliament, which is challenged, it will appear who are the transgressors.—But that event is sought to be anticipated by this information, and except the present jury be called for that purpose, I cannot see for what purpose they are now impanelled. The officers of the crown know that they can have no judgment upon this information:—They know it is impossible to sustain the inuendoes by proof; and that there are no averments to which any evidence given, can apply. This trial, therefore, can have no other object, but to influence an inquiry, which may hereafter take place; and whenever it does, the attorney-general will stand exculpated. No human testimony will satisfy me, that he would suffer an innocent man to be executed, knowing or believing him to be innocent. But there may be blame, in which he does not participate; and there may be inquiry, in which he may assist, not as affecting himself, but which may attach upon others. It is ridiculous, to suppose, that the documents which have been read by him, and which have not been proved, should have any influence upon the present case. They should have been reserved for that investigation which is challenged before another tribunal. But if it shall go before that tribunal, let it not be accompanied by the verdict of a jury to shelter the guilty. Upon this information, you are not warranted in finding a verdict against the defendant. The matter contained in that information is no libel *per se*; and there is no averment warranting a finding, which imputes a guilty intention. I will read it distinctly to you, and I will ask you, whether you must understand that this passage meant to convey a positive allegation, that upon an application to the lord-lieutenant for pardon, he refused to grant it, although he knew that the man for whom it was sought was innocent, and that he refused it, because the man was a Roman Catholic. That is the violent extension of the meaning, which is necessary to be given to this passage, to constitute it a libel. I might grant, for argument sake, that by reference to

\* 8 East 429.

† Cowp. 684.

other matter, you might think it was so meant. But there not being any averment to authorize such a reference, you must take it from the words themselves, that their meaning was unambiguously such as is contended for. [Here Mr. Burrowes read the passage.]

What can we infer from this—that the lord-lieutenant is charged with having executed the man, because he was a Roman Catholic, knowing that he was guilty? What does lord Ellenborough say, in the case of Hawkes, v. Hawkey.\* He says, "That nothing can be more clear, than the rule laid down in the books, and which has been constantly adopted in practice, not only where the words spoken do not, in themselves, naturally convey the meaning imputed by the innuendo, but also where they are ambiguous, or equivocal, and require explanation, by reference to some extrinsic matter, to make them actionable; it must not only be predicated, that such matter existed, but, also; that the words were spoken of and concerning that matter." And as there was not any colloquium averred, it was decided, that the innuendo did not enlarge the sense of the words, or supply the want of a colloquium.

Now, in this case, there is neither colloquium, averment, nor evidence. I should have objected to evidence, if it had been offered, because there is no averment in the record, to which the evidence would have applied. It is not averred, that any application was made for pardon, or that the viceroy was apprized of the man's innocence, or that he was apprized of his religion.

In the case of the King v. Horner† it is determined, that, "as to the matter to be charged, whatever circumstances are necessary to constitute the crime imputed must be set out."—Now, where are the words here, importing, that an application was made to the lord-lieutenant for pardon, and that he refused it, because the convict was a Roman Catholic?—The attorney-general says, he does not know, to this hour, what the man's religion was.—I am persuaded of it, and if it were mentioned to him, as a motive to influence his conduct, he would have spurned at it.—Why, then, should this imputation be inferred? It is stated, that he was in good circumstances, and might it not be suggested from thence, that he was hanged because he was wealthy, or because he was a farmer, or because he resided in Waterford?—For all these circumstances are stated in the publication; and it would be absurd to admit of any such inference. But I really feel this to be a waste of time, and will not dwell longer upon the topic, which is brought forward for the purpose of procuring a jury to act upon the allegation of a crime, with respect to which no judgment can be pronounced, for the manifest purpose of stating such verdict in another trial, and not with a view to punish the defendant—for

the attorney-general will not seriously say, that he can call for judgment, in case of a conviction, nor will he squander the treasure of a well-earned reputation, by such an assertion.

If I am right in what I have been urging, and the Court shall agree with me, I shall be relieved from another part of this case, into which I must enter with much reluctance, to which I have been challenged, and from which I will not fly.—If I state any thing unpleasant, it will sting no man more, than the man who is bound by his duty to make the statement. If the attorney-general had referred it to your opinion, whether the matter contained in the informations constituted a libel, without further evidence or explanation, which must be the final issue of the prosecution, I conceive, that he would have discharged his duty.—I would have joined issue with him.—I am ready to stand by that opinion now, and to relieve the jury from an unpleasant and irksome duty. We will argue this case, as upon a demand to the information, we will withdraw the plea of not guilty for the purpose, thus we will admit the fact, and avoid all painful and invidious statement and language.—If that be not acceded to, as, I perceive, it will not, I must discharge my duty also. Every man, of every rank, even though not an attorney-general, has a conscience of his own; and there is no man fit to hold his rank in society, who will not boldly follow the sanctions of his own conscience.

Mr. Justice Day.—I do not know, whether the solicitor-general will think proper to answer now, or reserve himself for a final reply. But, in my opinion, it will be necessary for him to answer you.

Mr. Burrowes.—My lords, it is with unfeigned reluctance, that I shall state any thing of an unpleasant nature. I should hope that I am freed from it, there being nothing offered to the Court, or the jury, to justify a finding, that this particular passage was published in the criminal sense which has been imputed to it. If such be the case, I am warranted in sitting down, governed by a feeling, with which I am always affected, a repugnance to introduce any thing, in public or in private, which is of a disagreeable nature. I hope it may be quite unnecessary and superfluous to go into evidence of any kind: and I would not state it, if there were not precedents of high authority for it.

Mr. Solicitor General.—My lords, what I shall offer to the consideration of your lordships and the jury, will be after Mr. Burrowes has closed his defence.

Mr. Burrowes.—Are we not entitled to the opinion of the Court, whether the information be supported?

Lord Chief Justice Downes.—We can give no opinion until we hear both sides, and you had better go on with your case, in the ordinary course.

\* 8 East 431.

† Cowp. 672.

Mr. Burrows:—My lords, I again offer, if we be allowed to withdraw the plea of the general issue—we will now demur generally, and argue the demurrer *instanter*.—If that be not acceded to, I must, however unpleasant, proceed in my statement.

Gentlemen of the jury; let it not be said, that I have affected an unwillingness to press an invidious topic, which I should not be justified in animadverting upon, after the introduction of it by the attorney-general. I have shown, that this information fails in imputing the crime, and that there is no evidence, and cannot, under the pleading, be any evidence, to establish it. There is, I admit, an averment that the book, and consequently the note selected for prosecution, was written of, and concerning the lord-lieutenant. It will be an additional defence for my client, to prove, that the censure meant to be conveyed applied to another person. I have, now, therefore, a case to state, which will satisfy the jury, that this matter was not published with reference to the lord-lieutenant. Really, my lords, it is with reluctance I proceed, and I wish I could be relieved, by the Court deciding upon the objection.

Lord Chief Justice Downes. This trial must proceed in the usual course.

Mr. Wallace.—My lords, I am counsel for the defendant, and will say a few words in support of the objection.

Mr. Solicitor General.—My lords, I object to Mr. Wallace speaking to this point, before Mr. Burrows has concluded. If Mr. Burrows had made his objection in the beginning, and relied upon it, there might be some reason for debating it. But he has addressed the jury for a considerable time, and he now wants to take breath.—Another learned gentleman intervenes, and the object is, that after I shall reply, Mr. Burrows may be at liberty to address the jury again.

Mr. Wallace.—Surely, my lord, I am entitled to address the Court upon matter of law.

Lord Chief Justice Downes.—This mode of proceeding is unexampled. If the counsel will among themselves arrange the matter, we may submit to it; but if they do not, the usual course must be pursued.

Mr. Burrows.—My lord, if these be any questions for the jury, whether the meaning imputed to the publication be supported by evidence, I must state something further: and painful as it is, I must discharge my duty. In addition to the failure of supporting the imputed crime, no evidence has been offered to prove, that the criminal passage in the information was published of the lord-lieutenant, and the fact and the truth of the case warrant me to state evidence, which we are ready to offer, admissible and legal, to contradict any such imputation. It is averred that this matter was published of and concerning the lord-lieute-

nant of Ireland; and it seems to be considered to have some allusion to him. No evidence is offered to prove it; and I have evidence to produce which would put it down, if any such had been offered.

The Attorney General has diminished very much the pain which I must feel in stating the facts which I am going to state. He has, by way of anticipation, stated much which he says would be inadmissible in evidence, and which he would not condescend to prove, if it were allowable. Can it be censurable in me to state what is admissible—what will be fully established in evidence—and what no ingenuity can explain away, or palliate! We shall state facts, and lay evidence before the jury, tending to shew that the matter complained of was not written and published of the lord-lieutenant, but of the judge who tried the man who was executed. What I have to state upon this part of the present case, I shall state with little commentary.

In fact, all commentary would be superfluous.—There cannot be any diversity of opinion or feeling upon the transaction which I am compelled to disclose. The case was this—On Saturday the 5th of August, 1809, the assizes of Clonmell were to end; and on the Monday following, the assizes of Kilkenny were to commence. Kilkenny is 55 miles distant from Clonmell.

Barry, who was confined in Clonmell goal, received a notice on Saturday, that he would be put upon his trial on Monday, for an highway robbery, alleged to have been committed by him some months previous to that time, in the county of Kilkenny. No man had been committed for that crime to Kilkenny goal, or received any notice, certainly not any regular notice, that he was accused of the crime. On Sunday he was marched to Kilkenny.

His counsel came into court, and produced an affidavit, swearing, that there were five persons, who resided in the county of Waterford, between forty and fifty miles distant from Kilkenny, who would prove his innocence, by establishing an *alibi*. One of these men, I am instructed to say, was a man of character and opulence in the country. It was stated by a magistrate of Waterford, then present, that there did exist such people as were named in the affidavit, and they resided in the alleged place; and therefore it could not be a fabrication. The application to postpone the trial was refused. He was tried on Tuesday. His counsel stated, that he would not go through the mockery of defending a man, who had not an opportunity of producing his witnesses. His counsel quitted the court. The noble judge tried him upon Tuesday, and he was found guilty and executed.

I shall read the affidavit in *hoc verbe* (which Mr. B. did, *vide post*, p. 1206): Why do I state this and how am I to bring it to bear upon this case? It will bear upon it most distinctly, by establishing that the judge, whose conduct



was so revolting, was probably the object of the passage under inquiry, and that the shocking circumstances alluded to, were those which I have stated.

The attorney-general has made a statement, which, as far as I can collect it, goes to show, that the noble judge had made inquiries—private inquiries—by which he was satisfied as to the guilt of the man, the infamy of the witnesses alleged to be absent, and the falsehood of the affidavit. Be it so. I do really wish that it could satisfactorily appear, that the noble judge had sufficient ground for refusing the application. But it is not stated, that he refused to give credit to that affidavit by reason of any thing which was openly stated in the court, but from something communicated by a person who was not sworn, and which was not made known to the counsel for the prisoner. I do not state—because I should not be allowed to prove—several affidavits briefed to me to establish the innocence of the man: but I confidently assert, that if he was not duly tried, he is still to be deemed innocent, according to the humane spirit of our law, notwithstanding his conviction; and that he cannot be considered as duly tried, if he had not sufficient notice of trial.

Now, I say that this evidence would go more forcibly to prove, that the passage in question alluded to the noble judge, than what has been read from the part to which it is a note can, to refer it to the lord-lieutenant. If that whole passage be duly considered and weighed, it will not be found, that the difficulty which a Roman Catholic finds in partaking of the prerogative of mercy is ascribed to bigotry or cruelty in the viceroy, but to his ignorance of his claim to mercy from want of that patronage and estimation of which the spirit of the penal code deprives the Roman Catholic.

Gentlemen, this statement, established as it will be in evidence, will do much to prove, that the lord-lieutenant was not the object of censure in this note. But it will do every thing to satisfy a candid and impartial jury, that it was not actuated by a malignant spirit: can it be imagined, that it would be the same thing, if all this had been stated without any ground or colour for it, but had emanated from fancy and invention? In what light must the conduct of the noble judge, in forcing on this trial, have appeared to a by-stander, who knew nothing of these saving circumstances which were stated here this day, and which privately, as is alleged, influenced his conduct? It appeared, that a man was called upon his trial, on a Monday—he had notice of it on Saturday—he was travelling all Sunday, and his witnesses were forty-five miles off. In civil cases, property of 10*l.* value cannot be put into jeopardy, without eight days notice.—What must have been the feeling of the thousands who witnessed this conduct? With what emotions would the most impartial historian of any feeling animadvert upon it? Could he be too indignant? Should any force

or extent of reprehension render him an object of punishment?

I shall not say more upon this part of the case. I should not have stated so much, if it had not been rendered necessary; if it were possible, by demurring to the information, and trying the question of law, without inquiring into the facts, I would gladly have done so. We are confident, that there cannot be any judgment in this case; but the same ground of argument shows, that there ought to be no verdict.

The judges, who try this case with an anxiety that justice may be done, will probably state their opinion upon it. You will, by your verdict, tell the world what you think. I appeal not to your feelings; my only hope is in your justice. I call upon you, and I require it from you, to stand fairly between the different classes of the community, to recollect, that this book was written for the purpose of doing away a monopoly of which you possess the exclusive enjoyment. You ought not to condemn the author. The object of the pursuit is laudable in the individual; and it is justifiable to discuss every public subject, with latitude. It cannot be expected, that such subjects should be discussed with more calmness than human nature can command.

As to the general complexion of the work, you see it is unobjectionable. The prosecutors have selected only one solitary passage, which is put forward as exemplifying one mischievous effect of the penal code; but it is not stated in relation to the lord-lieutenant of Ireland, and this is all which has been discussed in a work of three or four hundred pages. They fasten upon a speck on the disk of a luminous work, without touching the body itself; and you are now called upon to punish, at worst, a trifling excess, by a verdict, which is sought for, and will be made use of as a general condemnation of the spirit of the book, and of the object, in support of which it was written.

The liberty of the press cannot exist under such rigour. You are to judge by the whole work, as you are to be judged yourselves upon the last day, by the conduct of your lives, not for a single or particular act. No man can say, that his past life has been free from error. Upon similar principles, you will decide upon this book. Notwithstanding what has been said in contradiction of it, you must, if you read it, see it to be a valuable work. It will go down the stream of time, and posterity will applaud the man who was able to give a bold, a candid, philosophical and enlightened view of this penal code. Although some passages may be over-wrought, and warm feelings are not sufficiently restrained, yet you cannot consider it as a bad work, and I am not afraid of your verdict, if you peruse the whole. I conclude, by calling upon you to stand equally between the crown and the publisher of the Catholic grievances, and if you do so, I am confident, that you will find a verdict for the defendant.

*Burrows Campbell, esq. called.*

Mr. Attorney General.—My lords, I understand, that this gentleman is called as witness to prove what has been so candidly stated by the counsel for the defendant. It will, therefore, be for your lordships to consider whether, consistently with the rules of law, and established precedents, you will admit such evidence.

Mr. O'Connell.—The objection is premature, until an illegal question shall be put to the witness. The counsel for the crown are sufficiently numerous and vigilant, to make their objection in such case.

Mr. Justice Daly.—I understand, that this witness is called, for the purpose of disproving the averment, that the publication in question, was of and concerning the lord-lieutenant.

Mr. Campbell was then sworn, and examined by Mr. O'Connell.

Do you recollect any thing of a person of the name of Barry, who was tried at Kilkenny, in the year 1809?—I do.

You are aware, that he is the person alluded to in the publication in question?—I understand so.

Were you counsel for him?—I was.

Upon what day of the week, do you recollect, was he called upon, first, to take his trial?—On Monday.

What day of the assizes was that?—It was the first day.

Did the trial occur upon that day?—No.

Was any application made to postpone his trial?—There was on Monday.

Was that application made by counsel?—It was.

You were counsel?—I was.

Was the application made upon affidavit?—It was.

Have you a copy of it?—From the matter communicated to me, I drafted an affidavit, which was to be engrossed by an attorney, that draft I have in my hand, I think there was some alteration in it, and cannot say that this is an exact copy of what was sworn.

Mr. O'Connell.—My lord, we will prevent any objection in this respect. We have summoned the proper officer to attend and produce the original affidavit which was sworn.

Mr. John Bourne sworn.—Examined by Mr. O'Connell.

You are clerk of the crown for the Leinster circuit?—I am deputy clerk for three towns in that circuit.

Have you any affidavit sworn by a person of the name of Barry?—I have.

Was it filed in your office?—It was.

When?—On the 7th of August, 1809.

And has it remained in your office ever since?—Yes, until it was removed for the purpose of being produced here. I was served with notice on Thursday last to produce it, and I have got it here this morning.

[Here the affidavit was read as follows:]

"THE KING against PATRICK BARRY."\*

"Patrick Barry maketh oath and saith, on Saturday last, in the gaol at Clonmell, deponent had first notice of the charge upon which it is intended to try him at the present assizes. Deponent saith, that James Rogers, Thomas Hacket, senior, Thomas Hacket, junior, and David Barry and Maurice Macartney, are material and necessary witnesses for deponent, without the benefit of whose testimony deponent cannot with safety abide his trial; deponent saith, that said witnesses reside at Kileannon, in the county of Waterford, a distance of near fifty miles from this city, where deponent hath resided for three years, previous to his apprehension in the county of Tipperary. Deponent saith, that from the shortness of time which has elapsed since he came to this city, he is utterly unable to procure the attendance of such witnesses, during the present assizes; and deponent positively saith he does not make the present application, for the purpose of wilful delay, but solely on account of the absence of said witnesses, whose presence, he hopes and believes, he will be able to procure at the next assizes."

his

"Patrick X Barry, Sworn before me, this 7th day of August, 1809,

"Truly read by me, NORBURY."

PAT. BROPHY."

Mr. Campbell's examination was then resumed.

You then applied to the Court to postpone the prisoner's trial upon that affidavit?—I did; and upon hearing it read, I find there is only a difference of one word between it and the copy which I have. But I first applied to the judge without affidavit.

Upon what ground?—Upon what I conceived was judicially known to the judge; the late period of time at which the prisoner was transmitted from one county to the other; and the impracticability of procuring his witnesses on such short notice.

Was your application resisted by the counsel for the crown?—Not that I recollect.

Was there any affidavit made in answer to that of the prisoner?—No: Mr. W. Kemmis was in court; he made no affidavit. Upon the first application, which I made on Monday, the judge asked the clerk of the crown, whether there was sufficient business to occupy the Court that day; and being answered, that there

\* It is observable that this affidavit is in the name of Patrick Barry.—The indictments and his memorial were in the name of Philip Barry.

was, he then directed the trial to stand over until the next day; when the affidavit was sworn, and as I was beginning to address the Court, and stating the affidavit, some gentleman of the bar mentioned that Mr. Elliott, a magistrate, who was then in the bar box, knew three of the persons who were named in affidavit, as witnesses; I asked Mr. Elliott did he know them; he answered that he did; which I mentioned to the Court, as a ground of removing any difficulty.

This was not Mr. Bradstreet Elliott?—No.

Was he there?—He was not, to my recollection: he was a magistrate of the county of Tipperary, and I do not recollect to have seen him in Kilkenny.

Was your motion, grounded upon the affidavit, complied with?—It was not.

Upon what grounds was it refused?—I cannot pretend to state them all: some things passed, which I do not wish to speak of; and therefore, I request you will not ask me. I recollect, I told his lordship, that he must defend the man himself.

However unpleasant, sir, it may be to you to answer, I feel myself bound to insist upon it?—His lordship said, he had communicated with the magistrates, and that if a trial was to be postponed upon an affidavit drawn in so perfect a manner, the public business could not be proceeded upon, as prisoners would only have to employ counsel to draw an affidavit, when they would wish to put off their trials; I replied; what would his lordship say if the affidavit were imperfect?

Did you defend the man?—I did not, because I expressly stipulated with the gentleman who employed me, that if the trial should be proceeded on, I would not defend the man, in the absence of his witnesses; and upon the motion being refused, I threw up my brief, and left the court.

Was there any thing like a mandate held out to you, to remain in court, to defend the man?—There was something like a mandate.

From whom?—The judge, which I felt it my duty to reject contemptuously. I would rather you would not ask me any thing, that is not absolutely necessary.

I will not. Did you make any application afterwards to the judge, upon the subject?—I did. The man having been tried, and sentenced to be executed, I wrote a letter to lord Norbury, enclosing the affidavits of those persons who would have been witnesses for the prisoner stating what they could prove; that he was in their company at a distance of forty-five miles, when the robbery was committed.

Did you get any answer?—There was a verbal answer delivered to me, but I cannot say it was sent by the judge. I enclosed him the affidavit in a respectful letter.

And did you not receive a written answer?—I did not.

*Burrows Campbell, esq. cross-examined by Mr. Solicitor General.*

Had you been counsel for this man at Clonmell?—I had in the middle of the former week.

Upon the trial there, he was found guilty of a transportable offence, and acquitted of a capital one?—Yes; I think one indictment was for robbery in the highway; and the other for appearing in arms, under the White-boy act; it was one transaction.

You are mistaken in your recollection; for one indictment was for shooting at the prosecutor, with intent to murder him; and the other for forcibly demanding his goods and money?—One indictment was of a capital nature, and the other for a transportable offence; it cannot be expected, that I should remember the exact forms of the indictments upon a matter, respecting which I did not think I should be examined as a witness.

Do you remember, whether there was an order made by baron George, to transmit this man from Clonmell to Kilkenny?—I take for granted there must have been an order to transmit him; but I do not recollect it.

Can you say, upon what day of the week preceding, this man was tried at Clonmell?—I cannot, I have so many of these people's cases upon my hands, that I cannot recollect the particulars of each; but I should suppose, it was in the middle, or the latter end of the week.

Were not some of those witnesses, whose names were mentioned in the affidavit sworn in Kilkenny, produced upon the trial at Clonmell?—One of them was; a man of the name of Rogers.

Did that person give evidence for the prisoner at Clonmell?—Yes.

You drew up a memorial, for the man, addressed to the attorney-general?—I sent a letter to the attorney-general; but whether I prepared a memorial or not, I do not recollect.

Your object was to save the man's life?—It was, as I conceived that the trial was not regularly had.

His life could not be saved, without the king's pardon, and to obtain it from the lord-lieutenant, you applied to the attorney-general?—Yes.

And the ground of your application was, that the man's trial had been hurried?—I thought he was tried contrary to law; and I never knew an instance of a trial brought on under such circumstances.

Upon the statement which you made to the attorney-general, you hoped to get the duke of Richmond's pardon for the man?—I did.

And you addressed yourself to the attorney-general, knowing that he would apply to the duke of Richmond?—I considered the prosecution had been directed by the attorney-general; and of course, when the judge, to whom I respectfully applied, had refused, I thought the attorney-general was the proper person to apply to.

Then it was a government prosecution?—It was: Mr. Prendergast attended as counsel for the crown.

During all the discussion which took place respecting this man, in court and elsewhere, did it appear of what religion he was?—It did not, nor did I hear what his religion was, or inquire about it.

Mr. Justice Day.—Did the attorney-general ask you of what religion the man was?—He did not.

You received an answer from the attorney-general?—Rogers brought a letter from the attorney-general, who told him to lose no time in delivering it at the castle.

You have no doubt, that the attorney-general interfered immediately?—I never heard until this day, that the attorney-general had applied to the judge; but he did send a letter, which I conceived, did contain some recommendation respecting the man, and I considered that there was a great contrast between the conduct of the attorney-general and that of the judge.

You did not blame either the attorney-general, or the lord-lieutenant, in the transaction?—I never did; my sentiments are well known upon the subject, I never concealed them from any one.

Did you ever represent, that foul play was given to this man, because he was a Roman Catholic?—I never did, nor do I believe it was; although I love the Roman Catholics, and wish them emancipation, I do not believe they are treated so bad as that.

*Burrows Campbell, esq. re-examined by Mr. O'Connell.*

Was the application which you made in town, founded upon the affidavit which had been sworn in Kilkenny?—No, there was a distinct affidavit brought up by Rogers.

An affidavit stating the innocence of Barry?—No; but an affidavit stating, that he was in the company of the person making it and others, at a place 45 miles distant from the place, in which, and at the time the offence was charged to be committed.

Were the same names mentioned in both affidavits?—Some of them were, but I do not think all of them were mentioned.

You never concealed your sentiments upon this subject?—Never; I talked of it publicly in the hall of the four courts, and told it to every one I met.

You did not impute any blame to the lord-lieutenant or the attorney-general?—I never did.

But you did impute blame to a different person?—I did.

I will not now ask you, who that person was; but did you speak of it, as an ordinary occurrence or otherwise?—Witness shook his head.

Mr. Justice Day.—That shake of the head is a sufficient intimation of the witness's sentiments.

It was perfectly public before the publication in question?—It was.

Mr. Justice Day.—And you did not think there was any thing imputable to the government of the country?—Certainly not.

Mr. O'Connell.—Was it your idea that this was a fit subject for parliamentary inquiry?—I said at the time, I thought so.

Mr. Solicitor General.—Against whom?—Not either against the attorney-general or the lord-lieutenant.

Here it was admitted, upon the application of the defendant's counsel, that Mr. Pole was chief secretary, in the month of June last, at the time of the publication, and that sir Charles Saxton was under-secretary; and that in the month of November, when the information was filed, Mr. Peel was chief secretary, and Mr. Gregory under-secretary.

Then the case was closed on the part of the defendant.

Mr. O'Connell.—There being evidence on both sides, in this case, I claim a right to speak to the evidence. The practice is different in both countries; in England I admit, such a right is not allowed, but it has been decided otherwise here. The last case upon the subject is that of the *King v. Finnerly*, which was a prosecution for a libel, in which case Mr. Fletcher, now a judge of the Common Pleas, stated the defendant's case, and Mr. Carran, now the master of the rolls, observed upon the evidence.

Lord Chief Justice Downes.—I take the course in both countries to be the same; there may be exceptions from it under particular circumstances: but both in England and here, I take the course to be this, the prosecutor states his case, and examines his witnesses; the defendant's counsel then states his case, observes upon the evidence which has been given, and the prosecutor replies; this, I consider to be the general course; there may be exceptions, or the counsel for the crown may consent.

Mr. O'Connell.—My lords in the present case there is matter of law to be observed upon.

Lord Chief Justice Downes.—Unless there be a consent, there is nothing here to induce us to vary from the ordinary course.

Mr. O'Connell.—I do not expect any consent from them.

Mr. Justice Daly.—There was a meeting of the judges upon this subject in which it was debated and fully settled.

Mr. O'Connell.—Then I will confine myself to the matter of law.

Mr. Justice Osborne.—The matter of law

has been observed upon already by the counsel for the defendant. We will hear the other side, and if there be any necessity you will not be precluded.

Mr. O'Connell.—I am content.

Mr. Solicitor General.—My lords, I must beg leave to object to this mode of proceeding; the crown has the right to the final reply; if Mr. O'Connell shall be heard in answer to me, there then must be another reply on the part of the crown.

Mr. Justice Osborne.—I think the solicitor-general has a good deal to answer; if he is successful in combating the objections, we may then call upon the defendant's counsel.

Lord Chief Justice Downes.—I think this is the proper time for the defendant's counsel to apply, if they are to be further heard.

Mr. O'Connell.—My lords I merely intend to mention a matter of variance, which has not been hitherto observed upon. The information states that the publication in question, is of and concerning the lord-lieutenant, and the persons acting under the lord-lieutenant, not of those who had acted under him; the charge therefore is predicated of Mr. Peel and Mr. Gregory and it is clear upon the evidence, if any meaning can be attributed to the present ministers acting under the lord-lieutenant, it applies to different persons; the charge is in the present participle, and is not true in point of fact, for it applies not to persons acting under the lord-lieutenant, but who had acted; and the jury, to warrant a conviction of the defendant, must find that the publication was of, and concerning Mr. Peel and Mr. Gregory; whereas it related to their predecessors.

Mr. Justice Day.—I understand your objection to be this, that the information speaks in the participle present; whereas the persons in office are not the same who held the office at the time of the publication.

#### REPLY.

Mr. Solicitor General.—Gentlemen, of the jury; it would be now for me, at once to address you upon the subject of that libel, upon the construction and tendency of which, it is your exclusive province to decide; but that the counsel for the traverser, have imposed another and a previous duty upon me. I am called on, at this moment, to observe upon, what is said to be a question of law, to which, I understand it to be their lordships' pleasure, that I should first apply myself.

It is alleged, that the offence which we impute to the traverser, is not legally and technically described in the information now before the court; and I have been challenged, in the middle of a trial, and in the face of a jury, to defend the crown pleadings, as if upon a demurrer, or in arrest of judgment. This appears to be an extraordinary demand, and one which, if complied with, would establish a

most preposterous precedent:—it is neither more nor less, than to call upon the crown to shew cause why his majesty should not be non-suited—a proceeding heretofore unheard of in a court of criminal justice. As that cannot be done, in what other way shall the case be disposed of? Are your lordships to desire the jury to acquit in point of fact, because you entertain doubts in point of law?—The traverser says, that our pleading is bad; we say that it is good. If your lordships were to be of opinion against us, how can you at present assert that opinion?—You cannot put us out of court, and, in order to give effect to your judgment, be obliged to transfer your jurisdiction to the jury, and call upon them to pronounce upon the law, in the shape of a verdict upon the fact. If the traverser questions our pleading, he ought to have demurred to it, but by pleading issuably, he has generated a jury question, which it is impossible to elude. It is not denied, that there is a question for the jury; it is only asserted, that it is ill made, in point of form, and that a better pleader would have framed it otherwise; but, if that be true, the party is not without his remedy. He may move in arrest of judgment, with the advantage of every argument he might have had on a demurrer, and if he should succeed, the verdict will go for nothing. What the result of such an argument may be, I shall not here anticipate, but if your lordships should rule it now against the crown, without the opportunity of consulting authorities, and your lordships should happen to be mistaken, the mischief would be irreparable, and justice would be defeated by a hasty decision, at an improper time, and in an improper place, upon a question in no manner under the consideration of the Court. Without going into such a question here, suffer me only to remind your lordships, that by this pleading we charge, that a certain publication is a libel upon the lord-lieutenant and government, published with an intention to excite the king's Roman Catholic subjects to discontent.—The defendant pleads not guilty, and by so doing, controverts the publication which we allege, and the construction and tendency which we impute—a jury is sworn to try that issue between us.—Witnesses are examined at both sides, and then it is insisted, that the publication is not a libel *per se*, but requires averments to introduce, and innuendos to impute its occult meaning. Whenever that question shall be properly arguable, we have not the least doubt of persuading the Court, that the publication speaks for itself, and is a libel *per se*, according to the common sense of mankind in expounding ordinary language, which is the standard of construction both for judges and for juries; but that if any doubt should remain of that proposition, there are, on the face of the information, averments and innuendos abundantly sufficient for every purpose, that according to every authority, from the King against Horne to the latest decision, it is

enough, if to a common intent, the pleading states such circumstances as supply, substantially, any obscurity in the libel, and that it is little material in what precise words, and still less in what precise spot of the information such averments may be found. This is a mere outline of what we confidently expect to be able to support, should occasion require it; but, at present, we only deprecate the anomalous and extravagant proceeding which has been called for this day, and implore your lordships not to sanction by your authority the exhibition of that legal monster, which has never been seen in a court of justice, the argument of a demurrer upon an issuable plea pleaded, and after evidence given, or the argument of an arrest of judgment before a verdict pronounced. [The Court having conferred and acquiesced in what the solicitor-general said, he proceeded.]

Gentlemen of the jury; having now their lordships' sanction for dismissing such a consideration, I call your attention, at once, to what it is your duty to try. I most fully acquiesce in what has been urged by Mr. Burrowes, that not only the fact of publication, but the construction and tendency of the alleged libel, are matters exclusively for your decision, and that it is your province, and yours alone, to decide upon them. I wish not to draw them to any other tribunal. I ask for nothing but your conscientious answer to this question.—Is this publication a libel upon the duke of Richmond and his government, and is it's tendency to excite the Roman Catholics of Ireland to discontent, by charging him with having refused a pardon to a Roman Catholic convict, because he was a Catholic, although his innocence was established? You will observe, that the defence relied upon is, that the publication was intended, and according to its obvious meaning, can only be interpreted, to convey a censure upon the judicial conduct of lord Norbury, in a particular instance; and I am free to admit, that if such be the fair construction of this work, however base, unmanly, and unjustifiable it may be to attack the character of a judge, through the medium of anonymous slander, however unfounded may be the aspersion thus brought against the noble lord, still as the traverser is not prosecuted for a libel upon lord Norbury, he is entitled to an acquittal.—If you can bring yourselves to believe, that such was the intention of the author, you must acquit the publisher, and Mr. Fitzpatrick, must leave this Court, triumphing in the success of that accommodating defence, which may enable him, upon a future day, when he shall be prosecuted by lord Norbury, to elude justice, by alleging that he only intended to libel the duke of Richmond.

Before I call your attention to the work itself, in order to see how far this strange assertion can be supported, let me remind you of the extraordinary occurrence which distinguished the opening of this trial. You all recollect that the attorney-general, in opening the

case, strenuously relied upon this publication, as conveying the meaning imputed to it by the information, dwelt most forcibly upon the heinousness of the charges brought forward against the lord-lieutenant, and their mischievous tendency, and never once anticipated in his speech the possibility of that other construction, which, until Mr. Barrowes had far advanced in his speech, we never heard of. You must remember, that immediately upon his sitting down, before a witness was produced, or another word had been said, Mr. Scully, one of the traverser's counsel, got up and offered—

Mr. O'Connell.—My lords, Mr. Scully is not counsel for the traverser; and as the traverser cannot be affected by any thing which he has said, the solicitor-general is not warranted to use any observations made by Mr. Scully.—Whatever he said was as *amicus curie*.

Mr. Solicitor General.—If Mr. Scully be not counsel for the traverser, what he has said ought certainly not to affect the traverser; but I must say, that those who are his counsel, ought to have disclaimed Mr. Scully's interference at the time when he spoke, and not have disowned him for the first time, by interrupting me while I was in the discharge of my duty. And surely I may well be excused for my mistake, in supposing that a gentleman of the bar, who took so active a part in the defence, was acting as counsel, especially as his interference so little resembled what we understand by that of an *amicus curie*; I have always understood, that the interference of an *amicus curie* was, to supply some authority, or suggest some defect which the Court were likely to overlook; that an *amicus curie*—

Mr. Scully rose, and said, that he was sure, though the solicitor-general was warm, he did not wish to misrepresent him, and that he could assure him, that he had not by any thing he had said, at all acquiesced in, or submitted to, the construction put by the attorney-general upon the book in question.

Mr. Solicitor General.—I was interrupted, before I had time to make the observation I had intended, and which was certainly to the effect which Mr. Scully has anticipated; but from what Mr. Scully has now said, I must suppose, that I had misunderstood him, and was as much mistaken, as in conceiving him to be counsel in the cause.—I shall therefore abandon a topic, which I do not feel myself at liberty to pursue; and, gentlemen of the jury, I shall call your attention to the book itself.—The title is, "A Statement of the Penal Laws which aggrieve the Catholics of Ireland." The chapter, which contains the libel, is styled "Administration of Justice." The libel is a note upon a passage, relating exclusively to the exercise of mercy by the lord-lieutenant. In other parts of the book are to be found severe and cruel imputations upon the judges of the land—unfounded slanders, I verily believe—

but at present not the subject of inquiry. In that part of the book where the libel is found, there is no mention either of the judicial character in general, or of the name of any individual judge. The whole passage, to which the alleged libel is a note, treats of the lord-lieutenant, and of him alone. I shall now read it to you and you will judge; whether the duke of Richmond or lord Norbury, has the best claim to its application.

After descanting upon the circumstances, which the author alleges render it impossible for a Roman Catholic to have a fair trial in this country, he proceeds to describe the manner in which the royal prerogative of mercy is exercised towards those unfortunate persons, who have been convicted of crimes. "In cases where the Protestant murderer, or robber, has happened to be convicted, his Protestantism has secured his pardon. All the local *soi disant* loyalists fall to work: memorials and petitions are prepared and subscribed; vouchers of excellent character are easily procured: even Catholics dare not withhold their signatures, lest they should be stigmatized as sanguinary and merciless. Thus the testimony appears unanimous; and the lord-lieutenant readily pardons, perhaps promotes the convict, who in some instances becomes thenceforth a cherished object of favour. On the other hand where the prisoner is a Catholic he is generally destitute of this powerful agency and interference. His witnesses as may be expected, are usually persons of his own condition and family: it is true, they may swear positively to an effectual, and legal defence, wholly uncontradicted; but not being Protestant (*i. e.* *respectable*, the epithet attached affectedly to every thing Protestant), they commonly fail to meet with credit. The least apparent inconsistency, or ambiguity of phrase, is triumphantly seized as an indication of falsehood, although the error may only exist in the misconception of the hearer. The prisoner, when called upon for his character, never presumes to resort to the testimony of any neighbouring farmer or person of humble degree, *unless a Protestant*.—He appeals, perhaps, to some grand juror, or other man of note, or to the person, under the impression that they alone will meet with credit. The personage thus appealed to, perhaps, forgets the prisoner, or has barely heard his name—of course, his testimony proves of more prejudice than advantage; and thus the ill-fated prisoner loses the benefit of his best, and most natural evidence, that of his honest, industrious neighbours, from the cruel injustice and hostile influence of those penal laws."

In this last passage, the author has for a moment digressed from his immediate subject, and returns to the situation of Catholics upon trial; and I must be forgiven, if I digress also, to express my astonishment, at the malignity or insatiation, which could prompt any man, to hazard the assertions of the paragraph which I have last read, contradicted as they are by

the direct knowledge and experience of every man, who hears them. Is it in the face of this Court—of that learned bench—and of this crowded bar—is it in the presence of you, gentlemen of the jury, and of so many others around me, who daily witness the administration of justice, that I shall condescend to rescue from this vile slander the insulted laws of our country? There scarcely exists in this land, a wretch, so ignorant, and mean, who could be made to believe, contrary to the evidence of his own senses, that witnesses are rejected on the score of their religion; that Catholics are afraid to appeal to the testimony of Catholics—that persons of that persuasion are scouted from our Courts as witnesses, and that the Catholic prisoner remains undefended, because he is Catholic. The author of this work cannot expect to meet with a misrepresentation to be received in Ireland; and it is impossible to account for the audacity of the assertion, except by supposing, that it was intended for other countries, where the ignorance which prevails on the subject of our law, and our characters, might give currency to the slander.—The pamphlet then resumes the subject of the exercise of mercy, and continuing the description of the Catholic proceeds thus:—"Should he be convicted, a thousand rumours are immediately circulated to the prejudice of his general character; he is proscribed as a dangerous man, a leader of a faction; no grand jury interposes in his behalf, and he suffers death; publicly protesting his innocence, fortified by the testimony of his confessor's belief of his veracity, and exciting the sympathy and regret of the people."

Thus, he contrasts the two convicts, and as it were says—Look here upon this picture, and on this—here is the promotion of the Protestant convict—there the execution of the Catholic.—The fate of each is decided by his religion. There is here an asterisk, and the note, to which it refers, is the particular libel now under prosecution. It is introduced by these words, "*Tragical Instance*."—Instance of what?—In the text, there is not a syllable upon the subject of a judge refusing to postpone a trial; the only topic is a Catholic being executed after conviction, notwithstanding his innocence. The word "*Instance*" therefore, if a word were wanting, decides the application of the following passage:—

"At the summer assizes of Kilkenny, 1810, one Barry was convicted of a capital offence, for which he was afterwards executed. His case was truly tragical. He was wholly innocent; was a respectable Catholic farmer, in the county of Waterford; in good circumstances. His innocence was clearly established in the interval between his conviction and execution: yet he was hanged, publicly avowing his innocence!!! There were some shocking circumstances attending this case, which the duke of Richmond's administration may yet be invited to explain to parliament."—The learned counsel for the prisoner has

not disdained to special-plead upon this libel; and has argued, that it does not bear the construction imputed to it, and that if it conveys any censure, it is upon the judge who tried Barry, and not upon the lord-lieutenant, who refused to pardon him. He has said, that it might as well be inferred from this note, that the man was hanged because he was *respectable*, or because he was a *farmer*, or because he was a *Waterford man*, or because he was in *good circumstances*, as that he suffered death, because he was a Catholic. The simple answer is anticipated by every man's understanding: in the text, there is nothing on the subject of men suffering death because they are respectable, or rich, or farmers, or Waterford men, but there is a direct assertion, that Protestants are pardoned, and Catholics are executed, on account of their religion; and the amount of the argument is, that the only word in the note, which is applicable to the text, is to be rejected, and every other is to be adopted; and the whole passage is to be held inapplicable to the execution of a Catholic on account of his religion; because the author has introduced the narrative in the note, as a "tragical instance" of the truth of the text, which it is not pretended alludes to any thing else.

It is next argued, that be the meaning what it may, the charge applies to lord Norbury.—Look at those pregnant and significant words, "His innocence was clearly established *between his conviction and execution*—yet he was hanged." The guilt of executing this man is stated to depend upon his innocence having been clearly established—but when? *between his conviction and execution*. If lord Norbury deserves the dreadful censure which the defence of Mr. Fitzpatrick implies; if he was rash, or intemperate, or cruel, as a judge, his criminality ended with the man's conviction. The office of the judge ends there, and the responsibility of the executive government begins; and if between the conviction, and the execution, injustice has been done to the unfortunate man, the grievous weight of that charge rests with the executive government alone. The libeller has been studious to exclude any other conclusion; for he adds, that there were other shocking circumstances in the case, which the duke of Richmond's administration may yet be invited to explain to parliament.

I pause not to reply to the verbal criticism upon the word "Avite," to which Mr. Burrows has descended; but I call upon you, at once, to say, if the object of this libeller were merely to express his indignation at the supposed misconduct of the noble judge, what can be the meaning of saying that the duke of Richmond's administration might be invited to explain it? If a judge misconducts himself, he is answerable to parliament, and amenable to justice; but who has ever heard, until now, that the executive government was responsible for the conduct of a judge, and may be brought

before parliament to account for it? Is such monstrous and absurd ignorance consistent with all that learning, and talent, imputed to the author of this publication? And do I not owe an apology to the Court and the jury, for wasting so much time, in refuting that, which refutes itself? Let me not be supposed for a moment to compromise the character of lord Norbury, or intimate a suspicion, that the foul accusation now preferred against him, has any foundation in truth. He is not here to defend himself—he has no notice of the charge; it is for the first time brought forward. His name is not mentioned in the libel, and that slander, which the common sense of mankind has applied to another, the author this day, unexpectedly, transfers to him. He is, I make no doubt, ready to confront his defamer, and meet him before that tribunal, to which he is amenable, if his accuser should dare to bring him there, instead of assailing his character by anonymous defamation. But, I cannot but admire the novelty and decorum of the defence; which insists upon the author having libelled one of the king's judges, in order to protect him from the consequence of defaming his representative. To some persons, it may appear venial, to trample upon the judicial character, and bring the administration of justice into contempt; and our familiarity with that crime, may have suggested in this case, the voluntary confession of it, as a protection against the charge of having committed another: but the innocence of the traverser, as to the offence which he claims, is not more clear, than that he is guilty of that which he denies; although the testimony of Mr. Campbell has been resorted to for the purpose of discharging him of the one, and fastening the other upon him. I request your consideration of that evidence—Mr. Campbell defended the unfortunate subject of the libel, at the assizes of Clonmell, and failed in an application to postpone his trial at Kilkenny. He considered that his client had been hardly dealt with, inasmuch as his trial was not postponed, and he is brought here to vent, as a witness, that indignation, which, for the last three years would seem, if we may judge by his manner this day, to have been hermetically sealed in his breast, and now to boil over. He evinces no small warmth, even at this moment, and his mind, if we may judge by appearances, is not yet quite calm, or free from fermentation. This, perhaps, is on his part, however he may be mistaken, an honest zeal, and a laudable indignation; but certainly it is no smothered feeling. He states strongly what he feels strongly, and without much management conveys his sentiments upon lord Norbury's judicial character. He goes further, and says, that originally he was clamorous in his complaints, and inveighed against the conduct of the judge. He says, that he made an application to the attorney-general, in order to procure the lord-lieutenant's pardon; that though the application was not successful, he never, at any time, im-



puted, and does not now impute, the smallest blame to the lord-lieutenant or his advisers; that the conduct of the attorney-general was most humane and praise-worthy, and that he confined and does confine all his censures to the judge who tried Barry.

Has this gentleman been produced to prove that he understands this printed libel in a sense different from that which the crown imputes to it? If so, why was he not desired to read it, and why was he not asked, how he understands it? No such question was proposed, and he must be, therefore, considered as produced to prove, that neither the real facts of the case, nor his statement, warranted the publication in question, and that proposition, indeed, he has succeeded in establishing. He has sworn, that his animadversions were confined to lord Norbury, and yet lord Norbury's conduct, name, or office, are not even alluded to in the libel before you; and he has sworn, that he never intimated a censure upon the lord-lieutenant or his advisers, and considered the conduct of the executive government as praiseworthy.—No other authority for the story than his, is suggested or pretended; and yet this libel attacks the duke of Richmond and his administration by name: states nothing which Mr. Campbell had authorized, and much which he had not; and confines the whole of its vituperation to the executive government, of which, in the whole transaction, Mr. Campbell had not formed even an unfavourable opinion. In short, Mr. Campbell has proved, that if the author wrote upon his information, he has stated what is false; or that if he intended only to convey what he had learned from Mr. Campbell, he has used language, the very opposite of what was calculated for such a purpose; and that, meaning one thing, and expressing another, his defence must consist in proving this libel to be nonsensical, in the hopes of protecting him from the consequences of his defamation.

The testimony of Mr. Campbell furnishes a still more afflicting observation, equally applicable to this work, whether the lord lieutenant, or lord Norbury be the subject of it:—that gentleman had the fullest opportunity of knowing every thing about his unfortunate client:—he interested himself for the unfortunate man, until interference could be no longer useful.—He stood by him to the last; and when his fate was decided, trumpeted his wrongs to the profession and the public, indignantly and without reserve.—When I asked him, whether in all that intercourse, at his first trial, or in consultation with him afterwards when moving to put off his second trial, or when drawing his memorial, and preparing his affidavit—whether, either in public or private, it had ever appeared, what religion he professed, or whether that circumstance constituted any part of his case?—you must remember the astonishment expressed by Mr. Campbell, at such a question being proposed to him, and his solemn assertion, that during the

whole of his communications with Barry, the man's religion was unknown to him:—that at this instant, it is still unknown to him; that it had nothing to do with his case; and that if he had not, within this year, seen a statement of his being a Catholic, in a newspaper report of a debate in parliament, on a subject connected with this libel, he should not have been able, even now, to form any belief upon the subject. Let me ask you, gentlemen of the jury, what connection has the story told by Mr. Campbell with the title of the book, in which the libel is contained?—What has his fate to do, as a highway robber, executed in 1809, whose religion no man knows, with “A Statement of the Penal Laws which aggrieve the Catholics of Ireland,” published in 1812?—Let me call upon you to figure to yourselves, the author of this book receiving from Mr. Campbell, or catching from the throbb of public feeling which Mr. Campbell had excited, the statement which Mr. Campbell has this day given to you, and retiring to his closet to embody that statement in a commentary upon the penal laws, with which it is no more connected than with a history of the Russian campaign, or any essay on history, or criticism, or any work of fiction, with which he might have thought proper to edify the public.—Conceive to yourselves, the state of that man's heart, when he deliberately sat down, and stated Philip Barry's fate, as an instance of an honest man, to whom the mercy of the crown was denied, because he was a Catholic—and suffering death on account of his religion!—What excuse for such a perversion is suggested by the eloquent counsel—I must not say, it seems, for this author—but for Mr. Fitzpatrick?—Mr. Fitzpatrick, it seems, is eulogized this day, for his fidelity to the author, and his constancy in keeping his secret.—He, forsooth, is only the publisher; while the heroism of securing the greater delinquent, is put forward in extenuation of his guilt; in vending, and circulating the poison, which another had compounded. Be it so; let him have the glory of his self-devotion.—But, what has he to say for himself, or his friend? Has he nothing to allege, but that defence, under which his eloquent advocate has laboured this day, and does he hope to account for this monstrous distortion of truth, by pleading—as Mr. Burrowes has done, the exasperation of an irritated heart, brooding over it's grievances! the ardour of hasty composition, and the heat of an inflamed mind?—What is the nature of that heat which puts out light?—What perturbation of the feelings can justify the obscuring of facts?—Such a state of mind may account for intemperance, nay for exaggeration; but never for fabrication. I repeat it, what had the story of Philip Barry, as told by Mr. Campbell, to do with a commentary upon the penal laws?—What had the fact of his being convicted, because the trial was not postponed, to do with the allegation, that mercy is not extended to Catholics, on account of their religion, and that his fate was an instance of it?

What had Mr. Campbell's story to do with the defamation of the duke of Richmond, whose name he had not mentioned? Mr. Burrowes felt, that the state of the author's mind afforded but an imperfect answer to such questions, and he was obliged to change his ground, and intercede with the jury, in behalf of those casual and accidental omissions and mistakes to which the greatest writers are liable; those slips, as he called them, "*Quas aut incuria fudit, aut humana parum cavit natura*—a careless, perhaps an indiscreet, effusion of honest zeal, a solitary instance of something incorrect, in a great work—a mere marginal note, actually no part of the text, nothing but a postscript in smaller type, scarcely belonging to the work; in short, as he crowned his climax, a speck upon the disk of a great luminary. I must call upon my learned friend to reconcile such a description, with the eulogy which he has pronounced upon the work in question. It is, according to him, the production of a cultivated mind, and of distinguished talent, the result of profound knowledge, and philosophical investigation, a classic commentary, which the stream of time, as Mr. Burrowes says, is to carry down to the admiration of posterity. I have the authority of Mr. Burrowes for saying, that such is his opinion of this work. I have the authority of my own judgment for saying, that it is written by an able man, of much information, laborious in collecting his materials, systematic in dividing, and precise and methodical in arranging them—a man of cultivated intellect, not likely to be hurried away by intemperance, so to misrepresent, and travestie a story, as to make it appear every thing, but what it is. But, I ask Mr. Burrowes, and I ask you, is an author of this description, the person to whom you will extend the privilege of the only defence made for him this day? Is he the person who shall persuade you, that he has only blundered, and if you find his book explicitly libelling one man, and his counsel asserting that he intended to libel another, will you, in his case, (whatever you might think of an inferior writer) attribute his conduct to the confusion of the head, or the deliberation of the heart?—I called upon you before, gentlemen of the jury, to imagine any man, I now call upon you, to imagine this particular author, so eulogized for intellectual endowments—hearing Mr. Campbell's story in the morning, and sitting down in the evening, to give vent to that virtuous indignation, which Mr. Burrowes supposes capable of overpowering the judgment, and distempering the mind. Mr. Campbell had said nothing, and knew nothing, on the subject of Barry's religion. The author states him to have suffered death, *because he was a Catholic*. Mr. Campbell felt disgust and indignation against Lord Norbury, and endeavoured to communicate it to others. The author says nothing of Lord Norbury, and libels the duke of Richmond, and his advisers, of whom Mr. Campbell had not spoken, except with respect.

If this cannot be traced to folly, in such an author, shall it be compensated by his celebrity? And shall the public mischief, and the private slander, with which the libel teems, be considered the less criminal, because it is not, as we are told, the perishable effusion of a common libeller, but embodied in a work, for which Mr. Burrowes claims the applause of after ages? Shall the fame of the slandered man be borne down by the reputation of him, who assails it? Is the evil tendency of the work, in promoting public danger, extenuated by its popularity, and wide-spreading circulation?

How does it happen, that no other passage, in two volumes octavo, has been produced, in which a similar mistake is discoverable? Mr. Burrowes has read two paragraphs from the book, to shew, that the author's general opinions upon politics are creditable to him; but has he been able to point out another instance, in which such an extraordinary perversion of facts is to be found, as that what is intended for one man is said of another? Mr. Burrowes will not pretend, that either in the general character of this work, or in any particular part of it, he can find the traces of careless and hasty writing, or the features of an ordinary author. On the contrary, every thing is measured, finished, and cautious; there is classical taste, and studied purity in the style, and every thing which shews the gentleman and the scholar, *as far as composition goes*: But as to the substance and matter of the work itself, let me put it to Mr. Burrowes, as a man of honour and sensibility, if he were grossly and cruelly aspersed in such a treatise as this, if his feelings were harrowed up, by his being exhibited to his native country as capable of committing an imputed crime, and if an exaggerated description of that crime were made instrumental in exasperating the people, and endangering the public peace, would his mind be satisfied by the defence, which he has this day made for his client? a defence which admits, that the libel is as unfounded in fact, as it is mischievous in tendency, but under the pretence of a mistake, which no rational man could commit, would screen from the consequences of his guilt, an author, whom at the same time he celebrates for his ability.

Let me put it to the fairness and the candour of Mr. Burrowes, if I were to sit down, and instead of "*A Statement upon the Penal Laws*," which aggrieve the Catholics," should indulge my feelings in composing an eulogy upon those laws, and that constitution, which bless, and protect my fellow subjects of all religions. Suppose I were by my text, in a certain chapter upon the administration of justice, to enlarge upon the theoretical excellence of the laws, but lament, that practically the corrupt practitioner defeated their object, and perverted their advantages.—Suppose, I should descant upon the wiles and frauds, and baseness of the common barterer, and fomentor of suits, the petti-

feigning disgrace to his profession, and pest to society; and then, by a marginal note, should state as "a tragical instance," that Mr. Barrowes, or some other man, the whole tenor of whose life would give the lie to such an assertion, had been retained by one party, and taken a bribe to betray him to another:—that he had manufactured the litigation in a cause, in order to acquire to himself the property in dispute; that he had acquired the confidence of a female client, and under the pretence of defending her rights, had debauched her principles, and seduced her from the paths of virtue! I ask him not, what would be his indignation at such calumny, but what would be his greater indignation, if counsel employed to defend me, should rely upon it, that all this slander was mere mistake, intended for some other man?—A mere marginal note, an excrecence on a fair form, a speck upon the disk of a great luminary diffusing light, and heat, and animation, not only amongst my cotemporaries, but ushering in the dawn of brighter days to ages yet unborn?—I ask him, would he feel, in the brilliancy of that luminary, a compensation for the character which it had consumed? Or let me put to him the more probable case, that the author of the libel now before you, had selected him as the object of his malignity, and that the shaft which was levelled at the duke of Richmond, and has now, for the first time glanced at lord Norbury, had been pointed at his reputation. Suppose, that after detailing the fate of Philip Barry, and pathetically bewailing the treatment which he had experienced, the libeller had, by a note, inveighed against my learned friend, as counsel for the crown, upon that circuit, and stated, that he and his colleagues, in the cold-blooded and phlegmatic discharge of their duty, had sat by, and connived at the mistake, or intemperance of, the judge, and had seen an innocent man hurried to trial, and to death, without raising a voice, or an arm to arrest the course of injustice! Were the libeller to have so stated, the unanimous voice of the profession and the public would cry, "shame upon the slander." Never did there exist a man, of whom such a statement could be less truly made.—Never was there a man entrusted with a prosecution or a defence, who brought into the discharge of public duty more integrity, talent, spirit, generosity, more worth, moral and intellectual. The consciousness of virtue might sustain him against his base defamer, but what would he think of that defamer's advocate, should he defend him by alleging this complicated falsehood to be a mere accidental trivial error, in a great work, floating down to posterity upon the stream of time; and offer to mitigate the anguish of his feelings, by insisting upon the celebrity of the libeller?

I have said enough, perhaps more than enough, upon the construction of this libel. What shall I say of its tendency? Is it necessary upon that topic to address fair and reasonable men? The information alleges, that its

object is, to excite discontent amongst his majesty's Roman Catholic subjects. How can I add to the emphatic, manly, and eloquent language of the attorney-general upon this subject? Any feeble paraphrase of mine might weaken the impressions which he has made. Let me simply repeat his words, and declare my unequivocal adoption of his sentiment, that if the statements of this work were true, that the Roman Catholics of this country were deprived, on account of their religion, of the benefits of law, and mercy, they would stand absolved from their allegiance, and rebellion would become a duty, the obligations of which, nothing, but prudence, ought to restrain.

If ever there was a country, in which the promulgation of such a doctrine was more particularly fraught with danger than in all others, it is this. A large proportion of our people, imperfectly educated, and slowly advancing to civilization, quick and mercurial in their character, of susceptible temper, and of ardent spirit—How often have your lordships upon common, and upon special occasions, witnessed the afflicting spectacle of the peasantry of Ireland dragged to the bar of a court of justice, and forfeiting their lives to the offended laws, for crimes connected with insurrection, which, contemplating their brutal ignorance, it was almost impossible to account for:—but, if a missionary of sedition should go amongst the infatuated people, with this book in his hand, and preach to them rebellion against the laws, which neither offered to them protection, justice or mercy; should assure them on the authority of this highly-praised commentary, that if brought to trial, they would be convicted against law, and afterwards, could entertain no hopes of pardon; should follow up this representation, by imputing their miserable condition to their adherence to the religion of their ancestors, by virtue of which such heavy curses were entailed upon them.—What outrage, what crimes, what horrors, must not be expected? Who could bear to bring to punishment this deluded rabble? What government could stand justified in letting loose the vengeance of the laws upon the miserable and devoted populace, if, by a criminal apathy, the libellous author of such mischief should be suffered to escape with impunity?

I shall not say, indeed it is difficult to conceive, that the author could have intended all the complicated mischief with which it is the obvious tendency of this work to threaten his native country. He cannot have contemplated the possibility of any man in Ireland of ordinary information, or experience, swallowing the monstrous misrepresentations, with which this libel abounds. Nay, he could scarcely have reckoned upon the credulity of the lowest vulgar. I rather think he had a different object. This fabric was made up for the English market: in that country, our laws and habits, and characters, are but imperfectly known, and have often been misrepresented, too successfully: it is the seat of empire, and legis-

lation, and the author may have had his views, in disgusting the Protestant mind in England with this monstrous libel upon the Protestant government of Ireland. What must be the opinion of the inhabitants of that country, of the gloomy and sanguinary bigotry, imputed to their fellow subjects here—represented as persecuting the wretched natives on account of their religious opinions, and exercising the most galling tyranny of invaders and conquerors over a hapless people, whose conscientious adherence to their religion affords the only pretence for withholding from them the common blessings of law and justice, and mercy? But let us look further for the tendency of this work, and suppose it finding its way to France—What a document would it not be in the cabinet of the sworn enemy of our empire, the tyrant of his own country—the disturber of all others—now, thank God!—the discomfited fugitive from Russia—but who even in his misfortunes threatens the repose of mankind!—What a manifesto would this book furnish to him, if hereafter he should be able to accomplish that long meditated invasion, which perhaps he may now be the more disposed to attempt, in consequence of the failure of those greater objects, which hitherto have retarded it!—With what confidence might he not call upon his armies to follow him to the rescue of a gallant and suffering people—of four millions of men groaning under an abject and torturing despotism—not because they are unworthy—not because they want spirit and character—but because they profess a religion, which under a bigotted government, deprives them of the ordinary protection of law, and subjects them to be tried without justice, and executed without mercy.

Shall I only speak of the public mischief of this libel?—And is it no aggravation of the libeller's guilt, that he has made an attack upon the peace of his country, the vehicle of foul slander against the reputation of an honourable and virtuous man? I feel, that I am not anticipated, or encountered upon this topic by the levity with which Mr. Burrowes conveyed the sneers and sarcasms in which he spoke of the fastidious sensibility of an irritated and wounded mind. The duke of Richmond is charged by this libel with such a crime, as perhaps was never before urged against a public man, a crime, of which if he were guilty, he ought to be brought to the bar of parliament, and from that to the block. If he were capable of the hardness of heart, and depravity of mind, which, when he had the life of an innocent fellow creature in his hands, and could have saved him from an ignominious death by a word from his lips, prompted him to consign the wretched victim to destruction. If he has frustrated the prayers of the people—If the sword, which our lord the king has put into his hands, has not been used with justice and mercy; and, if above all, he has shut the gates of mercy upon the people whom he governs—not from the ordinary impulse of a cruel dispo-

sition, but from the detestable suggestions of a gloomy bigotry—on account of the religion which they profess—what is the punishment adequate to such guilt? What is the infamy proportioned to such baseness? The execration of his contemporaries, and of future ages, must accompany his name, and that posterity, to which the author of this libel looks for celebrity, must brand his memory, as the basest despot that ever tyrannized over a prostrate country.

If this applauded work goes down the stream of time, as Mr. Burrowes predicts, what materials will it furnish to the future historian? How can he, in a distant age, reject the authority of such a contemporary document, and what terms will he designate the administration of the duke of Richmond? Well might sir Robert Walpole, at the close of a long and anxious public life, lament that nothing is so false as history. Contemporary slander is too often its only support, and he, who hereafter undertakes to record the history of Ireland at the present day, may borrow his only lights from this detestable libel, and hold forth to after ages this slandered nobleman; as a 'bigot or a murderer:—and not alone a 'bigot, or a murderer; aggravated guilt belongs to the crime imputed to him: no common rank in the scale of infamy awaits him—the crimes of Nero, and of Commodus, and of Charles the 9th, though thousands were their victims, can only be traced to the ordinary suggestions of cruelty, and persecution; but the more refined enormity, charged against the duke of Richmond by this libel, holds him up as the wretch, who prostituted the forms of law to the gratification of bigotry and vengeance—who at one blow stabbed to the heart the victim of his malignity and the constitution of his country, and hid his dagger in the very folds of the mantle of justice!—But I trust in God, if this poison is to be carried down to our posterity by the stream of time, that it will not go down alone; that the wholesome antidote, correcting and neutralizing its influence will accompany it, in the record of this high court—the verdict of that jury, and the judgment of that bench; and that those who live after us, may not be able to reproach our age with the double guilt of producing this libel, and suffering it to escape with impunity.

Mr. Burrowes has condescended, in this case, to enlarge upon what he so justly calls the trite, and worn-out topic of the liberty of the press.—No topic is so trite, that he may not adorn it, and I perfectly concur with him in stating, that this high privilege, peculiar to our countries, is not the less valuable, because the praises of it have become a common-place.—But if ever a subject has been misrepresented, and misunderstood, it is the liberty of the press. One would suppose, from the daily declamation, and school-boy rants upon this exhausted theme, that the liberty of the press consisted in the uncontrolled license to write and publish whatever each man pleases.

The true distinction is this; in other countries, where this blessing is unknown, not only the permission to write, but the work when written, is subject to the previous review, and control of a public licenser; and if any man transgresses the bounds so prescribed to him, the summary vengeance of arbitrary power overtakes, and crushes the delinquent. But in our country no previous restraint is known, every man is free, as air, to publish what he pleases, and the liberty of the press is to his mind what the liberty of the subject is to his person; the one liberty is not greater than the other—in this free land, no man can bind the arm of a free subject; but if he raises that arm for the commission of a crime he is responsible; if he raises it to rob or murder his neighbour, he must answer to the laws: so with the liberty of the press: no man can restrain it; but he who avails himself of it must publish at his peril. If he robs another of his fair fame, if he assassinates reputation, he must be amenable, and the laws have not only decided upon his responsibility, but established his tribunal—a jury of his country, and a jury alone can pronounce upon his guilt. This lesson has been taught to the despot of modern Europe, and it is the boast of Great Britain, that even he—the murderer of Palm—the tyrant who has gone beyond all others, in enchaining the very liberty of thought—has sought protection when defamed, and found it in the genius of the British constitution. During the short interval of our peace with France, the first consul was libelled by a London newspaper: his ambassador called for that summary vengeance upon his defamer, which his master had been used to inflict, but he called in vain; the sacred principle of our laws was explained to him, that no man could be restrained from publishing what he pleased, and that if he transgressed, he could only be tried by his country. To the laws of that country, was the first consul of France obliged to resort. At his prosecution, the attorney-general of England filed an information against the libeller, and a British Jury convicted the delinquent, and did justice even to an enemy.\* Such is the true character of the liberty of the press. I admit, with Mr. Burrowes, that in restraining its licentiousness, juries ought not to be over critical, or endanger its liberty by rigid and strict constructions of that inestimable privilege, which every free subject enjoys, of discussing public affairs, and the characters of public men: but this case affords no such opportunity, and admits no fear of such a danger. The plain limits between the freedom and the outrage of the press, have been transgressed. Private reputation has been wantonly slandered, the public peace endangered, and under pretence of enlightening the people, a fire-brand has been thrown amongst them. Let Mr. Fitzpatrick then compare his situation, with

that of the unfortunate Palm of Nuremburgh. No haughty interdict prescribed to him a previous rule for his publication; and when he has transgressed the laws of the land, no serjeant's guard has invaded his printing-house, and dragged him to a summary court martial, and military execution. Let him not suppose, that because he is free to publish, he has a right to slander, and that the liberty of the press protects him from that punishment which is due to its licentiousness.

I should hope, that I had misunderstood Mr. Burrowes, in supposing, that in the defence of this libel, he has arraigned the prosecution as an attack upon the Roman Catholics of Ireland; but I certainly cannot be deceived in my recollection, that he has occupied the greater part of the time in which he addressed you this day, by discussing the political question of Catholic emancipation: this is the third time, that I have been challenged to a parliamentary debate, in the face of a jury and a court of justice. What connection can subsist between such a question and a prosecution for a libel, it is for his ingenuity to discover: but above all, it is difficult to understand how the claims of the Roman Catholics can be brought into contact with the libel now before you. I never can believe, even from him, that he can be authorized in representing the Roman Catholic body of Ireland, as identifying themselves with such shameful defamation. Such an insinuation is neither the suggestion of his own sound judgment, nor has he the sanction of any one who is himself authorized to speak the sentiments of that body. He must be misled by the instructions of a desperate case, and I must attribute to Mr. Fitzpatrick, or to the gangrene of the corroded heart of the libeller, an insinuation so improbable, as that the Catholics of Ireland will acknowledge this production as the organ of their opinions; that they are content to be represented in the attitude of approaching the bar of parliament, presenting their petition in one hand, and brandishing this libel in the other; and that they concur in the infamous slander upon the laws of their country, which alleges that they are not administered to persons of their religion; and in the foul calumny upon a high character, which represents the duke of Richmond as murdering a man, because he was a Catholic. Neither can I accede to the argument of Mr. Burrowes, that because the Catholic question is under discussion, this libel has a claim to indulgence, on account of the irritated feelings of those who lament the constitutional privations from which they seek to be relieved. The pendency of that question, can afford no pretence for such license, or extenuation for the foul libel before you. No man is warranted, because he thinks himself aggrieved, to defame his neighbour and disturb his country; and the Catholics, when they seek to be emancipated from the laws which effect them particularly, cannot claim the privilege of violating those which bind them, in

\* R. v. Peltier, 7 How. Mod. St. Tr. p. 529.

common with all their fellow subjects. The principles of truth, and the suggestions of that honour, which forbids one man to state of another, that which is false, must not be said to sleep, because the Catholic question is under discussion. Important as that question is, which now awaits the decision of parliament (and of its importance, no man is more persuaded than myself), it cannot claim a right to paralyze all the duties, and charities, and obligations of social life, and to overturn those laws which enforce and maintain them. It is, I admit, a most anxious question, and deeply interests the feelings and the passions of the Catholics; but I cannot concede, that because their question remains in suspense, the principles of justice are to be suspended too; that because their feelings are excited, foul calumny is to be licensed, or unpunished; and that the law of the land is to be arrested in its course, and like the sun of old, to stand still in the firmament, while their battle is fought, and "until they shall have avenged themselves upon their enemies."

## SUMMING-UP.

Lord Chief Justice Downer.—Gentlemen of the jury; this trial (which has so long occupied your attention) is now drawing to a conclusion; and the evidence has been so ably observed upon by counsel on both sides, that it will not be necessary for me to trespass much further on your time. However, I shall say a few words, to direct your attention to the object of your inquiry, which is, whether the charge, as stated in this record, be sustained by sufficient evidence. Whether the charges, which are spread upon the record, be sufficiently direct, in point of law.—Whether they are stated with the technical accuracy which the law requires, are matters with which I shall not embarrass you; those matters will still be open to the party for discussion, if he shall see occasion for investigation hereafter. For the present, it is enough for me to say, that here is a charge brought before you upon a plea of not guilty. The prosecutor states an offence by the information—the defendant says, he is not guilty, and you are now to try that issue.

I am far from telling you, that you are to limit your view of this case to one or two objects.—By the law of the land, you are to ascertain, whether the matter charged be a libel, or not—as well as whether it were published by the defendant, and with what intent:—whether the information be well founded in imputing to the defendant the publication of this matter as containing a charge against the duke of Richmond, and the ministers acting under him?

In this part of the case, you will observe what evidence has been given, respecting another person—one of the judges of the land. Because I have no hesitation in telling you, that however atrocious the imputation may be—however false, or malicious—if it be not

pointed at the duke of Richmond, and those acting under his authority—if the guilty conduct, represented by the publication, be imputed to another—I mean lord Norbury—if it be, as is contended for the defendant, solely an attack upon lord Norbury—it is not the offence charged upon this record, and it will be your duty to acquit the defendant.

You have further to see, whether the averments and innuendoes in this information are true and properly applied; whether the sense, which this publication bears, be the same which the information imputes to it, and whether it was published with the intent stated by the information, and contains the charge of abominable misconduct alleged. The information states, that the defendant, "intending to scandalize, traduce, and vilify his grace the duke of Richmond, lord-lieutenant of Ireland, and his majesty's ministers acting under the authority of the said lord-lieutenant, and to excite discontent amongst his majesty's subjects, professing the Roman Catholic religion in Ireland, did publish a certain false and seditious libel, of and concerning his grace the said duke of Richmond, and his majesty's ministers in Ireland," &c. Then the matter is set forth, and it is followed by an innuendo, attributing a particular meaning to it.—With regard to the sufficiency of these averments, and innuendoes to put the matter properly on the record; a question may arise for discussion hereafter.—But you will direct your attention to the question, whether the charge made against the defendant be true or not—"that he meant to insinuate and cause it to be believed, that because the said Barry was a person professing the Roman Catholic religion, the said duke of Richmond with the advice of his majesty's ministers in Ireland, acting under the authority of the said lord-lieutenant had determined, that the said Barry should not obtain his majesty's pardon, and had accordingly suffered the said Barry to be executed, as a felon, though the innocence of the said Barry was established to the knowledge of the said lord-lieutenant and ministers."

With respect to the proofs of the publication, no question is made by the counsel, who so ably argued on behalf of the defendant.—You have had evidence that it was published at a shop kept by a person of the defendant's name, and that there is no other person of the same name keeping a shop in the same street.—In truth, no question is made upon the fact of publication.—But the import, intent, and meaning, is matter for your consideration; and it is also for you to say, if it does contain the charge of atrocious misconduct alleged, whether it was intended to be applied to the duke of Richmond or to another person.—With respect to that fact, you have heard a great deal of argument on both sides, expatiating upon the peculiar circumstances of the case. Upon one side, it is contended, that the person alluded to by the publication must be the lord-lieutenant:—and on the other

side, a witness has been examined, for the purpose of satisfying you, that it is pointed at lord Norbury, and not at the lord-lieutenant.

—Whether it will so satisfy you, is for yourselves to determine:—But I must remark, that it is not a very gracious defence, to say, it is true, that imputations of a very horrible nature were made, but they were not intended against the individual named in the information—but against another. Still I must at the same time add, that however atrocious the publication may be, if the defendant has satisfied you, that it was not intended to calumniate the lord-lieutenant, but another person, you must find a verdict of not guilty, because the charge on the record is, that the matter was directed against the lord-lieutenant.

It has been strongly observed upon, that if this story was told from the information given by Mr. Campbell, such story was infamously false; because he expressly told you, that from the beginning to the end, he never imputed to the lord-lieutenant, or the attorney-general, or any minister of the government any blame in the transaction. And therefore, if you shall believe, that it was not levelled solely at the judge, it is a false accusation against the lord-lieutenant.

In general, the intent with which any writing is published, is to be collected from the writing itself—unless some other intent be clearly established. If this work does attack the government of the country, you may then see from the book itself, with what intent it was published, and whether it be not in its nature calculated to create discontents of the greatest possible magnitude among the Roman Catholics of Ireland. If it does impute to the duke of Richmond, and those acting under his authority, that they withheld the mercy of the crown from a man who was entitled to receive it, on account of his innocence being established, and that merely and solely because he was of the Roman Catholic religion.—If you believe that the publication was so designed, that its object was thus to misrepresent the chief governor of Ireland, and thereby to excite discontent among so large a portion of his majesty's subjects in this country—it is, in that case, impossible for you to doubt, that it is a most atrocious libel indeed.

Whether it relate to the duke of Richmond, or, as is alleged by the defence, to lord Norbury, the context of the paper itself will perhaps furnish you with sufficient ground for your decision one way, or other. If it was intended as an attack upon the judge, you would naturally expect to see it contain something relative to the judicial character alluded to. There is nothing stated respecting the trial, or what preceded it—nothing relative to the application to postpone the trial. But it refers to a refusal of mercy—to an abuse of the prerogative of the crown, to the execution of a person after his innocence was established; and it is accompanied with a further observation, “that there were some shocking

circumstances attending the case, which the duke of Richmond's administration may be invited to explain to parliament.” You will consider, whether this paragraph shews the preceding imputations to be a charge against the judge, or against the duke of Richmond, and his administration.

I mention this as internal evidence, which may enable you to determine, whether or no, this publication is of and concerning the duke of Richmond and his majesty's ministers in Ireland, acting under the authority of the lord-lieutenant, as stated in the information:—Or, whether it be “of and concerning the judge” who tried the man.

With respect to this being a charge against lord Norbury, and the conduct imputed to him, I must observe, that he is not upon his defence:—He is no party in this case: he is not here to state the circumstances which governed his conduct. It is immaterial to this case, whether he was right or wrong, in the conduct of the trial of Barry; but it cannot be for a moment doubted, that upon a proper opportunity, he can sufficiently justify himself. Upon applications to postpone the trials of accused persons, the conscience of the judge is to be satisfied, from all the circumstances which appear before him—he is to decide whether upon those circumstances, justice will, or will not be advanced by postponing the trial, and we are now to presume, that upon the application made to the judge in the case alluded to, the facts were not so laid before him, as to satisfy him that justice required him to postpone the trial.

You will take this book with you. Several parts of it have been read by the gentlemen on both sides, with a view, on one side, to satisfy you, that the general tenor of it, so far as it touches upon the subject of mercy, was to create an opinion, in the mind of the public, that the prerogative of mercy was abused in the most abominable manner. On the other side, passages were read to show, that the object of the writer was, to lay before the public certain grievances, complained of by, and affecting, his majesty's Roman Catholic subjects. Gentlemen, any man who feels a genuine impression that the people are aggrieved by any existing laws, may fairly and honourably discuss the subject, and state the reasons why the laws should be altered. But if, in doing so, he thinks proper to make a specific charge of a criminal offence against a person of high responsibility, not being at the trouble of inquiring into the truth or falsehood of it, he does so at his peril, and must be answerable to the person whom he has injured by the defamation of his character, and to public justice. The writer, in such case, cannot defend himself by merely alleging that it was not intended for that person, but for another: if on the face of the publication it appears levelled at the person whom the information charges the defendant with intending to calumniate by it, there must be very

clear evidence: to enable you to apply it to another.

You will judge from the nature of the charge, whether it was intended against the other person alluded to upon this trial, or against the lord-lieutenant. If you believe that the publication does convey the sense which is put upon it by the prosecutor, and that it meant to charge the lord-lieutenant in the manner stated in the information, then it will be your duty to say, that the defendant is guilty. On the other hand, if you believe that it does not impute such a charge to the lord-lieutenant—but, whether true, or false, applies it to another person, then the offence charged by the information is not proved, and you must find for the defendant.

In looking at the book to which your attention has been directed, you see that the paragraphs which have been read by the counsel for the crown, relate to the administration of justice, and that branch of it which is vested in the king, or his representative—the dispensation of mercy; and after describing the situation of the Catholics of Ireland, with regard to the administration of justice—as a situation, such as I hope no inhabitants in any part of the globe are to be found in—the writer proceeds to give the instance in the passage which has been read.

There is another circumstance, which I shall mention, with regard to the application of this charge, as against the lord-lieutenant, and also with regard to the motives of the party. It has been proved by the witness for the defendant, that he did not know of what religion the man was, and yet the charge in the publication is, that mercy was refused to be extended to him, because he was a Roman Catholic. The witness for the defendant was ignorant of the man's religion, and had not communicated to government any thing about his religion. There is no evidence to show that his religion was at any time known to the government. These are strong grounds for discovering the motive of the writer—but the motive and meaning are matters entirely for your consideration.

If you believe that this part of the work was published with the intention which has been imputed to it by the information of charging the lord-lieutenant with a gross abuse of the prerogative of mercy, and from a motive so base that it was merely because the man was a Roman Catholic, you will find the defendant guilty. But be it ever so gross—and whether true or false, if you believe that it was not intended against the lord-lieutenant, but against the judge, you ought to acquit.

[The information, and the book given in evidence were delivered to the jury, who retired.]

Mr. Burrows.—My lords, if we shall deem it right to make an application hereafter, it will be necessary to understand, exactly, the charge of the learned judge. There can be

no bill of exceptions in a criminal case. But if there be a mistake in point of law, there may be an application to set aside the verdict. I think your lordship left it to the jury: probably you were right in doing so—that it was for them to try the truth of the innuendoes, as stated in the information.

Lord Chief Justice Downes.—Yes, I did so.

Mr. Burrows.—With great respect, I think that your lordship should have told the jury that the innuendoes not being supported by averments, there was no evidence—and there could be no evidence—to support the information.

Lord Chief Justice Downes.—That question is still open to you, upon the record.

Mr. Justice Daly.—I also think that you have the benefit of this objection at a subsequent period.

After a few minutes the jury returned, finding the defendant—GUILTY.

11th February, 1813.

Mr. O'Connell, for the defendant, moved: to set aside the verdict, on account of the misdirection of the learned judge, in charging the jury, inasmuch as the same was against law and evidence.

The Attorney General required that the defendant should appear in custody; upon which he surrendered himself to the sheriff.

This motion was argued by Mr. O'Connell and Mr. Burrows for the defendant. The counsel for the crown not being called upon. The reporter was occupied in another court, during the greater part of this argument: he is informed, however, that the other judges of the court declared that the charge given by the chief justice, was to be considered, not merely as the charge of the chief justice, but as the charge of all the Court, all the judges being present, and occasionally suggesting matters in the progress of the charge.

The judgment of the Court upon the motion was as follows:—

Lord Chief Justice Downes.—My brethren are all satisfied that the verdict ought not to be disturbed on account of the objections, which have been made; and, for my part, I think that the way in which the case was put to the jury, was conformable to the practice of all the courts, and of all times, as far as I have been able to discover, varying only as to cases before the libel act, by conforming to that statute.

The case came before the jury, upon an information for a libel, and the issue before them was, whether the defendant was guilty or not guilty. What was done? Evidence of the publication of the matter charged to be a libel by the defendant was laid before them: the



matter so proved was read to them, and the book was also handed to them, upon their returning to their room. Several parts of the same book were read on both sides, in the presence of the jury, and they were told, they were to consider—as the law now requires they should, whether the matter charged in the information, and so proved to have been published by the defendant was a libel or not. They were told, that they were to decide as to the truth, and the application of the innuendos, and the averments, whatever they are.

An objection was taken at the trial, that there were not sufficient averments upon the record: the answer to the objection was, not that the averments were sufficient, but that, that was not the proper time for making the objection: that, whether there were sufficient averments or not, to maintain the publication to be a libel, was a subject which might be inquired into more regularly upon a future opportunity.

The jury were told, that if they believed the matter complained of was published by defendant, and was a libel, and that it was of the meaning imputed to it upon this record, they should find the defendant guilty: and although Mr. Burrowes said, that the charge to the jury went out of the record; I understand him to mean, not that the judge left to the jury any thing absolutely extrinsic of the record, any thing which did not appear on the record in some manner or other, or in the evidence, but that the averments were not properly made upon the record, so as to bring matters left to the jury upon the record; for I take for granted, that he never did mean to say, that the judge put to the jury any fact or question which did not appear upon the record in some mode.

Mr. Burrowes.—My lord, I expressly said that the averments were insufficient; and I never meant to insinuate that any matter, not appearing on the record had been left to the jury.

Lord Chief Justice Downes.—Then it comes to this; whether upon the trial of an issue joined upon a fact, which is for the jury, absolutely and exclusively to decide, it shall be discussed, whether the averments upon the record are sufficient to maintain the charge; averments which cannot be varied, and which must appear upon a motion in arrest of judgment as distinctly as in any court, trying the fact upon which the issue is joined, and at the proper time, when such question should be discussed, and according to all practice, examined after the trial; the matter appearing fully and at large upon the record. Should we tell the jury—even if we had formed an opinion, decisively upon the mode in which the record was framed—that they had nothing to try?—That we should tell them, no matter what you think of the evidence or its application to the facts, charged upon the traverser,

because those charges are irregularly and clumsily framed. We will decide upon it and prevent the jury having cognizance of the cause.

Before the statute, so important in the law of libel; the original course upon a trial for a libel was this: The jury was called upon to decide the fact of publication, the truth and applicability of the averments and innuendos; and if they believed the publication to have been the act of the defendant, and the innuendos applicable, the law of the case was reserved to the Court to decide afterwards, whether the publication was a libel or not. This mode of proceeding has been altered by the statute; and now, not only the fact of publication, and applicability of the innuendos, but the question, whether the paper so published and proved, be libellous or not. All that was done in the present case, in precise conformity to the act of parliament, according to the best of my judgment, and my brethren concur with me in that respect.

Now, if what is contended for by the counsel for the traverser be true (and which comprises the whole of this case necessary to advert to) the judge at *Nisi Prius*, who if the case were tried on circuit, might be a judge of another court, would have to decide upon the sufficiency of the averments, and could not permit the jury to try the facts, until he had determined whether they were sufficiently spread upon the record; and upon his opinion, if he thought the averments insufficient, he must decide as on a demurrer and the defendant would be discharged from all answer in evidence, to the real issue which was joined between the parties and upon which both went to trial. It is obvious, to what an enormous length of inconvenient and premature discussion, this would lead, and how often real justice would be risked by this mode of proceeding; instead of renewing, in the case of libel as in all others, all questions already completely on the record for the proper jurisdiction to discuss, in the proper season in arrest of judgment; or by writ of error, both of which modes of redress would become unnecessary for the defendant and impracticable to the prosecutor, after a general verdict of not guilty so procured. This is no new doctrine: it has been at all times the course to reserve questions which are upon the record for discussion after the trial; if the party has not thought fit previously to discuss them by demurrer, and not to argue, in the presence of the jury, matters not within their province, and which with more propriety and in a more convenient course, can be afterwards discussed before the proper jurisdiction. This has been always the case in all other proceedings, and that it has been so in the case of libel, we have the highest possible authority for saying. When the libel act, of which ours is a transcript, was in progress through parliament in England, the lords, desirous of minutely inquiring into the law, and course of proceedings of the judges, put

various questions to them; to which they gave deliberate and solemn answers—which carry authority and respect as the answer of the twelve judges of England.—

I will read to my brethren the third question put by the lords, with the judges answer to it; and they will see, whether they do not bear strongly upon the present case. Every one of the cases imagined in the answers to those questions is infinitely stronger than the present.—The third question put to the judges was, “Upon the trial of an indictment for a libel, the publication being clearly proved, and the innocence of the paper being as clearly manifest, is it competent and legal for the judge, to direct or recommend to the jury, to give a verdict for the defendant.” What is the answer? “That upon the trial of an indictment for a libel, the publication being clearly proved, and the innocence of the paper being as clearly manifest, it is competent and legal for the judge to direct or recommend to the jury to give a verdict for the defendant.”

“But we add, that no case has occurred in which it would have been, in sound discretion, fit for a judge, sitting at *Nisi Prius*, to have given such a direction, or recommendation to the jury.

“It is a term in the question, that the innocence shall be clearly manifest. This must be in the opinion of the judge: but the ablest judges have been sometimes decidedly of an opinion, which has, upon further investigation, been discovered to be erroneous; and it is to be considered, that the effect of such a direction or recommendation would be ~~unnecessarily~~ to exclude all further discussion of the matter of law, in the court from which the record of *Nisi Prius* was sent, in courts of error, and before your lordships, in the *dernier* resort.

“Very clear, indeed, therefore, ought to be the case, in which such a direction, or recommendation shall be given. In a criminal case, which is in any degree doubtful, it must be a very great relief to a judge and jury, and a great ease to them in the administration of criminal justice, to have the means of obtaining a better and fuller investigation of the doubt, upon the solution of which a right verdict, or a right judgment, is to depend.

“A special verdict would, in many cases, be the only means, where the offence is described by some one or two technical terms, comprehending the whole offence, the law and the fact combined: such as the words, ‘feloniously did steal.’—The combination must be decomposed by a special verdict, separating the facts from the legal qualities ascribed to them, and presenting them in detail to the eye of the judge, to enable him to declare, whether the legal quality, ascribed to them, be well ascribed to them, or not.

“There may be a special verdict in cases where doubts arise on matter of law, but it is not *necessary* in all cases. In some criminal proceedings (the proceedings in libel, and the publication of forged papers, for instance),

some of the facts are detailed in the indictment; and if the doubt in law should happen to arise out of the fact so detailed, *we say it is upon the record. The question might have been discussed upon demurrer, without going to a jury at all, and after verdict, it may be discussed on a motion in arrest of judgment.* In such cases, a special verdict is not necessary:—the verdict of ‘Guilty,’ will have the effect of a special verdict, without the expence and delay of it, establishing all the facts, and leaving the question of law open to discussion.

“There are three situations, in which a defendant, charged with a libel, may stand before a judge and jury in a court of *Nisi Prius*. First, the matter of law may be doubtful:—in that case there ought to be a special verdict, or a verdict *which shall operate as a special verdict*. Secondly, the case may, in the opinion of the judge, be clear against the defendant. If the verdict is special, in form, or in effect, he has no reason to complain; his case comes before the Court, from which the record is sent, without the prejudice of an authority against him. The third situation is, that the opinion of the judge may be clear in favour of the defendant. In that case, whenever it shall happen, we have offered it, as our opinion, that it will be competent and legal for the judge to direct an acquittal.”

Now, I cannot conceive any doctrine more directly applicable to what passed upon the trial of the present cause; or more clearly bearing upon the objection now before the Court, than what is to be collected from the answer of the judges, which I have read. If the matter of law be doubtful, there ought to be a special verdict: or a verdict, operating as such—manifestly shewing, what ought to be the conduct of the judge trying the cause; that he ought not to take upon him, at once, to decide the matter; but have it reserved for the opinion of the court, from whence the record issued. Now, in the present case, this objection was made and questions raised at the trial, which, at the trial, we did not think necessary to decide, or to discuss; because, as we declared at the time, the questions remain on the record, and cannot be altered, or made to appear different to the Court from whence the record issued, and therefore we thought, and declared, that the case should go to the jury, to find a verdict of guilty, or not guilty, notwithstanding such objections, which to this moment, may be made in arrest of judgment.

The objections urged upon this motion, amount to this, that we ought to have done, what the judges of England declared—under circumstances much more favourable to the defendant—would not be fit to do; and that in a case where no man, who hears me, would say, it was a case in which the judge ought to pronounce *conclusively*, that the defendant was manifestly and plainly innocent; and ought to take from the jury all discretion and inquiry upon the subject: and that upon a matter of

law—possibly doubtful—but not discussed for the reasons given; conceiving, that the proper time for such discussion would come thereafter.—And now it is said, that we should have told the jury, decidedly, and conclusively—in a way, which would preclude our own error from being again examined, if we were wrong that they had nothing to decide upon, for that sufficient averments were not made upon the record. Now, I must further observe, that although the judges of England, in their answers to the questions put by the House of Lords to them, and among others, the answer I have read, brought fully before parliament their whole course of proceeding, and among other circumstances, the very principle of their practice in not discussing at the trial questions already on the record, parliament never thought fit to direct any alteration in the conduct of the judges in that respect; all that parliament thought fit by the Libel act to direct, is this, That the judges should not require a verdict of guilty, or not guilty, upon the bare proof of the publication—but should leave it to the jury to determine whether the paper, so published, is a libel or not—making them judges of the law, so far as that went, at the same time, directing the judge to give his own opinion to them upon the question of whether the publication was a libel, or not (which in this case was done). But parliament never thought fit to require, or authorize a judge, at *Nisi Prius*, to decide upon the points of law, which were properly inquirable in another form, and did not interfere, so as to direct, that points of law should be discussed before a jury—and which points remained upon the record for discussion at a subsequent opportunity. The judge is left to his ancient duties in that respect, without condemning the mode which had been exercised or the practice which was founded upon it. Thus showing, that parliament did not disapprove of that course and that they left the law in the hands, in which the constitution had placed it—recognizing, that there was a proper course, and time, when all objections appearing on the record are to be discussed. This therefore may fairly be considered, as a parliamentary recognition of the convenience, propriety, and legality of the practice stated by the judges there and followed by us: and in my apprehension, what I have stated, is sufficient to show, that the trial was not the place to debate this question—whether the averments be or be not properly put upon this record, is to be examined and decided upon a motion in arrest of judgment, since the defendant did not earlier make the objection by demurring to the information.

The chief-justice concluded, by saying, that the whole Court were unanimous in opinion, that there was nothing, in what was urged, to impeach the verdict.

Mr. Justice Day.—I am glad that this motion has been made, as it has produced the powerful and conclusive judgment, just de-

livered by my lord-chief-justice, touching the law of the case, and which, it is hoped, will set all question upon the law in future at rest.

It is objected, that no evidence ought to have been received to the matter of the innuendos, as no averment appears upon the record introductory of that matter. But it is admitted expressly at the bar, that nothing extrinsic of the record was given in charge to the jury—nothing that is not clearly and distinctly alleged in the information; and in a motion to the discretion of Court, that admission of the counsel is a full answer to his own objection.

It is true that every man must be tried *secundum allegata et probata*. No evidence can be received on the trial, to any fact, not alleged or implied by the pleadings: thus, in an indictment for high treason, the overt acts must be distinctly set out and it would be perfectly competent to the counsel for the prisoner to object to any evidence, going to an overt-act, not alleged in the indictment. But was it ever objected on such a trial, that the facts for the jury to try, though plainly and intelligibly set out in the indictment, wanted, however, due technicality and strict legal form upon the face of the pleading? Such objections plainly arise upon the face of the record, and, if well founded, the prisoner cannot fail, in proper season, to have the benefit of them. Mr. Barrowes, however, in a laudable zeal for the character of his client, not content with a motion for arresting the judgment, struggles to get rid of a verdict which must brand him with indelible disgrace and shame. Every man, who knows the virtuous sensibilities of that gentleman, will do justice to his ardent appreciation of character. But does the learned counsel, in a motion where the prime question always is, whether the verdict be agreeable to justice and to the merits of the case, expect the concurrent sympathy of this court for his client, convicted as he now stands, with the full approbation of the Court, of publishing a libel, not more mischievous and malignant, than slanderous and false?—Where his defence has been as wicked as his crime?—Where he comes forward with brazen effrontery, and says, “No; I did not murder A. B.; it was C. D. whom I murdered? I did not utter a libel on the duke of Richmond—it was a learned judge of the land whom I intended to defame, in the solemn exercise of a judicial duty—in the painful discharge of the most painful functions of his situation.” And this atrocious defence is gravely advanced in an open Court of justice, by evidence the most presumptuous and disgusting, behind the back of the learned lord, who is the object of it—and who of course, had no means of repelling the foul slander, but the well-known benevolence of his nature, and the monstrous incredibility of the narrative.

But it is material also to recollect, that this is a criminal case, in which applications, for new trials are very sparingly countenanced; never, indeed, but where, if refused, there would be a manifest failure of justice. Such

was the case of the King v. Gough, in Douglas. Taking this case, therefore, in all its bearings, whether in a legal point of view, or upon its merits, there never was an application less entitled to the favour or countenance of a Court of Justice.

Mr. O'Connell.—I am now to resort to the alternative of my motion—that the judgment may be arrested.

Lord Chief Justice.—It is too late to enter upon the argument this day—and I fear, that it will injure the public conveniences to proceed with it; to-morrow, being the last day of the term.

Mr. Burrows.—My lord, I feel the difficulty of arguing the case this evening or to-morrow—for the press of other business, but the defendant is now in custody.

Lord Chief Justice.—He may be admitted to bail.

Mr. Attorney General.—My lords, if it be attended with any inconvenience to the public business of the Court to debate this matter now, it must necessarily be postponed, and in that case, the defendant must be admitted to bail. But notwithstanding what has been said, I have the most perfect confidence, that we can sustain this record in all its parts. Where a doubt is suggested, it is quite sufficient to let the defendant stand out upon bail.

Lord Chief Justice Downes.—Manifestly, this is a case deserving discussion: In saying so, I do not mean to intimate that I have formed any opinion.

Mr. O'Connell.—The application to amend the record disclosed its defects.

Mr. Townsend.—My lords, I was the person, who made the motion to amend the record—that motion was made in order to avoid the argument founded upon an allegation, that the innuendos are insufficient, I am not ashamed to avow, that I framed this information; and do aver, that it can be sufficiently sustained.

Mr. Burrows.—We have nothing to do with these assertions: it is not denied, that such application was made.

Mr. Attorney General.—If the defendant will give up the author of the publication, I will consent to his standing out upon his own recognizance. If that be not acceded to, I will propose that such security will be given as will compel the defendant to answer the charge, and render him amenable to justice. I propose, that he shall enter into a recognizance of 1000*l.* by himself, and two sureties of 500*l.* each.

This proposition was acceded to on the part of the defendant.

To the original report of this case was subjoined the following

APPENDIX.

Copy of Baron Gzozor's Notes of Barry's Case.

No. 82. True Bill. Philip Barry, } Indictment.  
Cust. 5th July. } For that the

king at Glanbower, feloniously did assault Patrick Codd, and a certain pistol laden with gun-powder and leaden bullet, feloniously and maliciously did discharge at him, with intent feloniously to murder him, against peace and statute.

No. 83. True Bill. Philip Barry, } Indictment.  
For that he same day, year and place, feloniously did demand money from Patrick Codd, with intent to rob him, against peace and statute.

First witness, Patrick Codd.

He lives at Carrick-on-Suir; on the 4th July, was going to Callan; the post-boy conveying the mail was in company with him; a man came over the ditch within half-a-mile of Glanbower, this was turned 11 o'clock, he seized his bridle, and stopped his horse, presented the pistol at him, and desired him to alight, and deliver; points out prisoner, says it was him, he desired the post-boy to stop also; he bid witness again to alight, or he would blow his brains out.—Witness alighted, he had 492*l.* about him; the post-boy was then for moving away. Prisoner turned towards the post-boy, witness attempted to seize him—witness rushed on him—he discharged the pistol, he thinks, at witness, knocked him down and wrested a second pistol from him, witness snatched it, and threw it over the ditch, he struggled with witness till post-boy returned in about five minutes, and they secured him; he let off the pistol, he is satisfied voluntarily; and not merely with an intent to intimidate him, but with intent to wound him.

Cross-examined.

He has heard, he was carrying home pistols, but has no reason to believe it.

Second Witness.

Mr. James Bradstreet Elliott,—he lives near —was called on, with the prisoner, when taken by first witness, and the pistols brought with him (now produced), prisoner is the man: the pistols when brought to him had both of them been lately discharged.

For the Prisoner.

James Rogers.—Prisoner was once his servant, latterly his workman; witness got those pistols from a Mr. Hearn, his brother-in-law, to protect himself, as he lived in disturbed country, and had been attacked once or twice,—Mr. Hearn wrote to witness to return them, as he had borrowed them himself. Witness sent

those arms back by the prisoner—the prisoner had the arms in his possession 4 or 5 days before he was taken up. It was on the road between his house and Mr. Hearn's, he was taken up.

**Cross-examined.**

The pistols were not loaden, when he gave them, and gave no ammunition; he had to go from 28 to 30 miles from his house to Mr. Hearn's.

The jury acquitted him, in No. 82, and found him guilty in No. 83, upon which the prisoner was sentenced to be transported.

At the foot of the evidence is the following entry.

To be transmitted to Kilkenny, to be tried for a highway robbery.

The following information was sworn on the same day when Barry was apprehended.

County of Tipperary } The information of  
(to wit.) } Patrick Walsh, duly sworn deposes, and saith, that between the hours of ten and eleven o'clock in the morning of the 4th of July, carrying the Carrick mail, in company with Mr. Patrick Codd, merchant of Carrick aforesaid, he was stopped by a man, now calling himself Philip Barry, on the road near the bridge of Glanbower, that deponent rode off with the mail, and left him engaged with Mr. Codd, who made him a prisoner, and brought him, with this informant to Mr. Elliott.

Sworn 4th July, 1809.

before

J. B. Elliott.

his  
Patrick Walsh.  
mark.

END OF VOL. XXXI.









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